

No. 84-149

Office-Supreme Court, U.S.
FILED
AUG 24 1984
ALEXANDER L. STEVAS,
CLERK

**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1984

SHELBY RIGGS, ET AL.

PETITIONER

v.

**COMMONWEALTH OF KENTUCKY,
ET AL.**

RESPONDENTS

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

BRIEF IN OPPOSITION

**DONALD H. BALLEISEN
PATRICK A. NEPUTE
DOROTHY M. PITT**

3300 First National Tower
Louisville, Kentucky 40202
(502) 589-4200

**COUNSEL FOR ALL RESPONDENTS
EXCEPT PHILIP TALIAFERRO,
LIBBY WALTHALL, JAMES S. WAY,
JACK RAZOR AND JOHN MCNEILL**

GREENEBAUM DOLL & McDONALD
Of Counsel

August 22, 1984

BEST AVAILABLE COPY

QUESTIONS PRESENTED

A. Was the Court of Appeals correct in affirming the judgment of dismissal of the District Court upon the grounds that the record failed to disclose that:

(1) Petitioners possessed either a constitutionally protected property or a liberty right; or (2) Defendants had acted in such a manner as to violate any constitutional right of Plaintiffs?

B. Do the claims of Plaintiffs involve only alleged failure to follow state law which is not within the jurisdiction of a federal court?



INDEX

QUESTIONS PRESENTED.....	i
STATEMENT.....	1
I. THE ECONOMIC AND LEGAL BACKGROUND.....	1
II. THE LAYOFFS.....	4
III. THE PROCEEDINGS BELOW.....	5
SUMMARY OF ARGUMENT.....	11
REASONS FOR DENYING THE WRIT.....	12
I. NO PROPERTY OR LIBERTY RIGHT IS PRESENT IN THIS CASE.....	12
A. Petitioners Have No Pro- tected Property Interest in State Employment.....	12
B. No Protected Liberty Interest is Involved....	17
II. ONLY QUESTIONS OF STATE LAW ARE INVOLVED.....	20
III. DEFENDANTS' QUALIFIED IMMU- NITY BARS THE CLAIM OF PETITIONERS.....	22
CONCLUSION.....	24
APPENDIX A	

TABLE OF CASES AND AUTHORITIES

Cases:

<u>Bishop v. Wood</u> , 426 U.S. 341, 349-50 (1976).....	22
<u>Board of Education v. Vail</u> , ___ U.S. ___, 104 S.Ct. 2144 (1984), <u>affirming</u> 706 F.2d 1435 (7th Cir. 1983).....	16
<u>Board of Regents v. Roth</u> , 408 U.S. 564 (1972).....	12, 13 18
<u>Cleveland Board of Education v. Loudermill</u> , 721 F.2d 550 (6th Cir. 1983), <u>cert granted</u> 104 S.Ct. 2384 (1984).....	17
<u>Davis v. Scherer</u> , ___ U.S. ___, 52 U.S.L.W. 4956 (1984).....	23, 24
<u>Fishgold v. Sullivan Dry Dock & Repair Corp.</u> , 328 U.S. 275 (1946)...	19, 20
<u>Ford Motor Company v. Department of Treasury</u> , 323 U.S. 459 (1945)....	21
<u>Hudson v. Palmer</u> , ___ U.S. ___, 52 U.S.L.W. 5052 (1984).....	16
<u>Logan v. Zimmerman Brush Co.</u> , 445 U.S. 422, 432 (1982).....	15, 16
<u>Parratt v. Taylor</u> , 451 U.S. 527 (1981).....	16
<u>Pennhurst State School & Hospital v. Halderman</u> , ___ U.S. ___, 52 U.S.L.W. 4155 (1984).....	21, 22
<u>Perry v. Sindermann</u> , 408 U.S. 593 (1972).....	13, 16
<u>Riggs v. Commonwealth of Kentucky</u> , 734 F.2d 262 (6th Cir. 1984).....	10

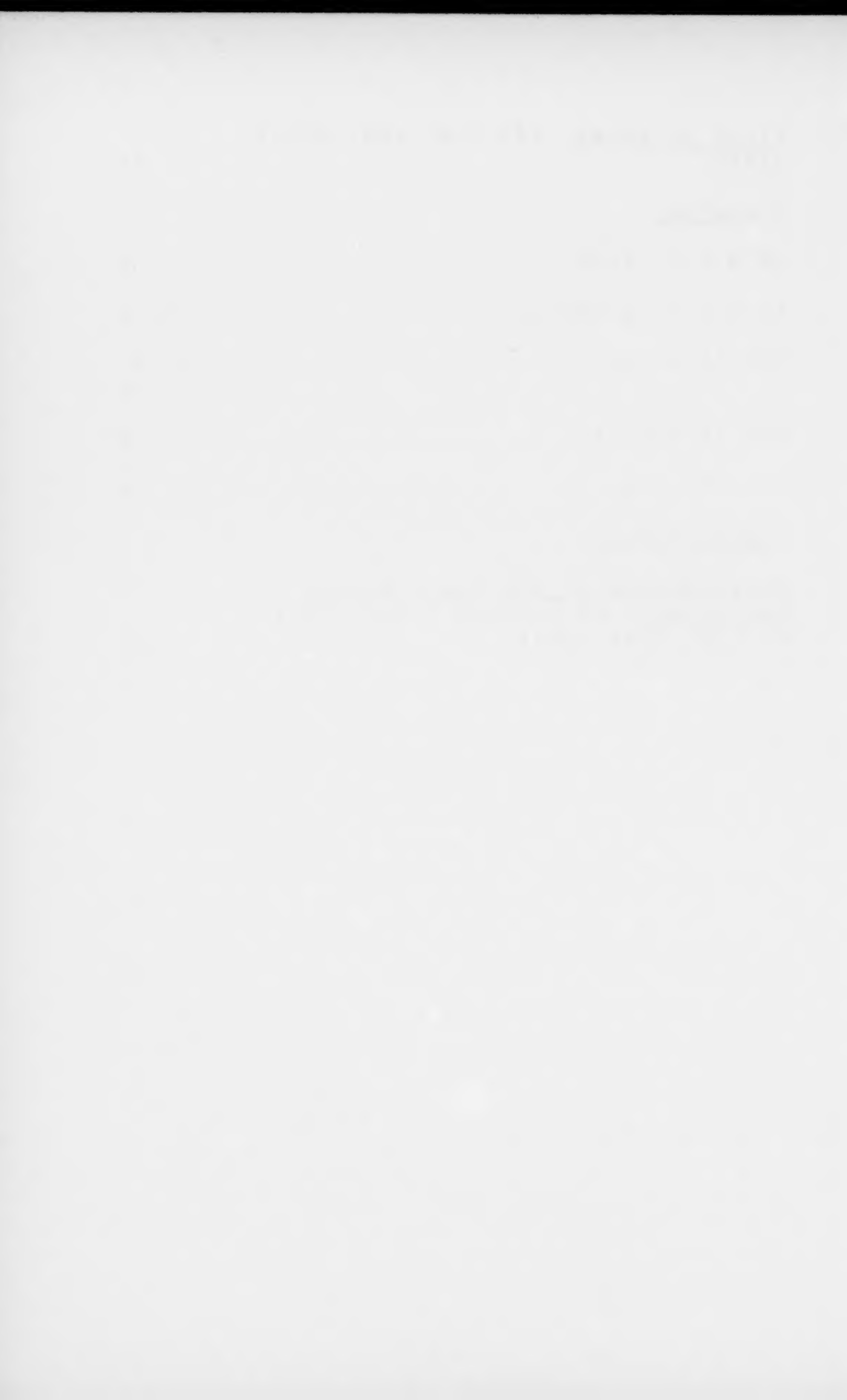
<u>Vitek v. Jones</u> , 445 U.S. 480, 490-1 (1980).....	15
--	----

Statutes:

29 U.S.C. §626.....	6
42 U.S.C. §1983.....	5, 6
KRS 18.210(4).....	3, 4, 14
KRS 18.210(14).....	9
101 KAR:120.....	3, 14

Miscellaneous:

<u>Developments in the Law - Public Employment</u> , 97 Harvard L.Rev. 1611 at 1780-1794 (1984).....	19
---	----



**IN THE
SUPREME COURT OF THE UNITED STATES**

No. 84-149

October Term, 1984

SHELBY RIGGS, ET AL.

PETITIONER

v.

**COMMONWEALTH OF KENTUCKY,
ET AL.**

RESPONDENTS

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

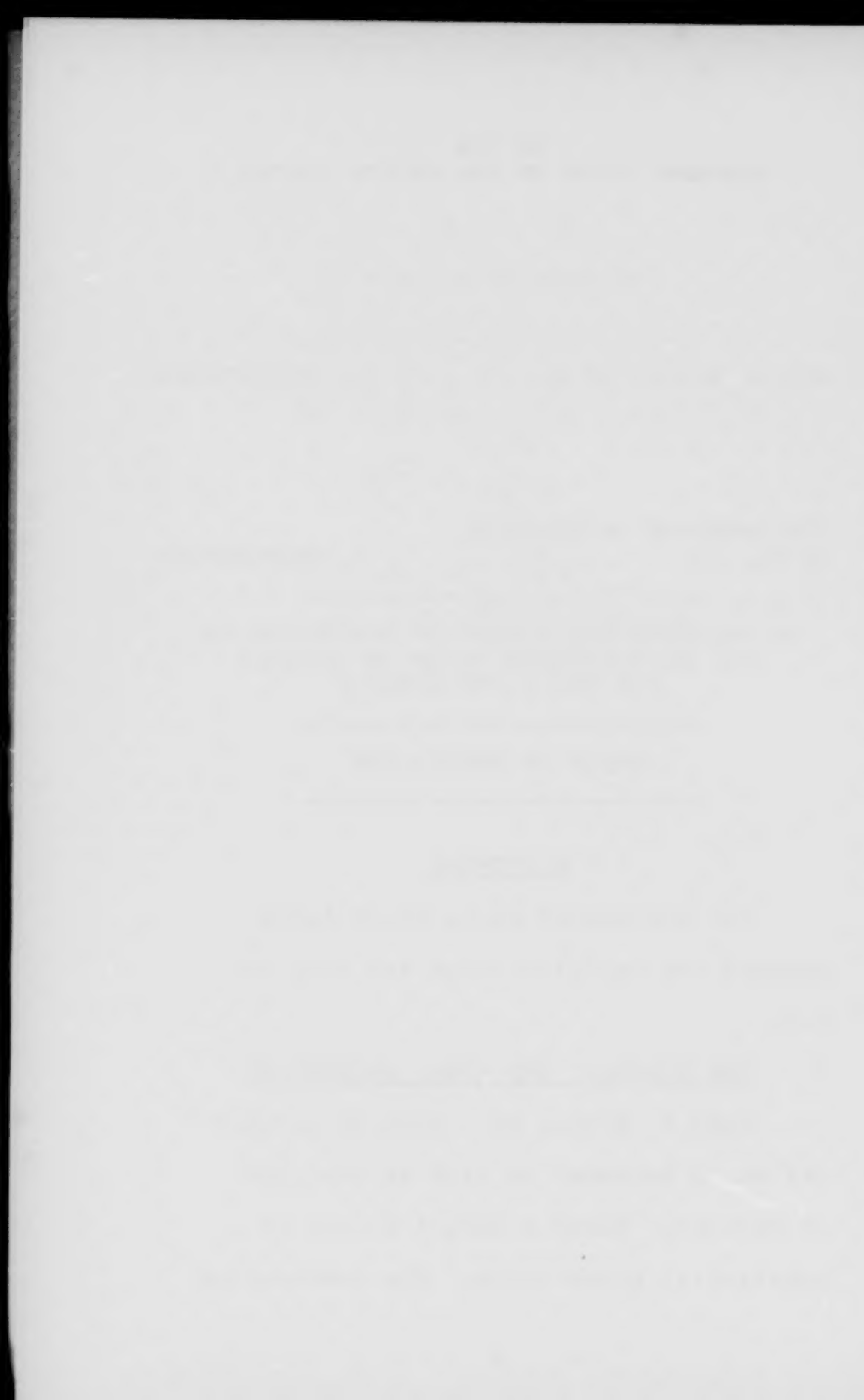
BRIEF IN OPPOSITION

STATEMENT

The undisputed facts which fully support the decision below are here set out.

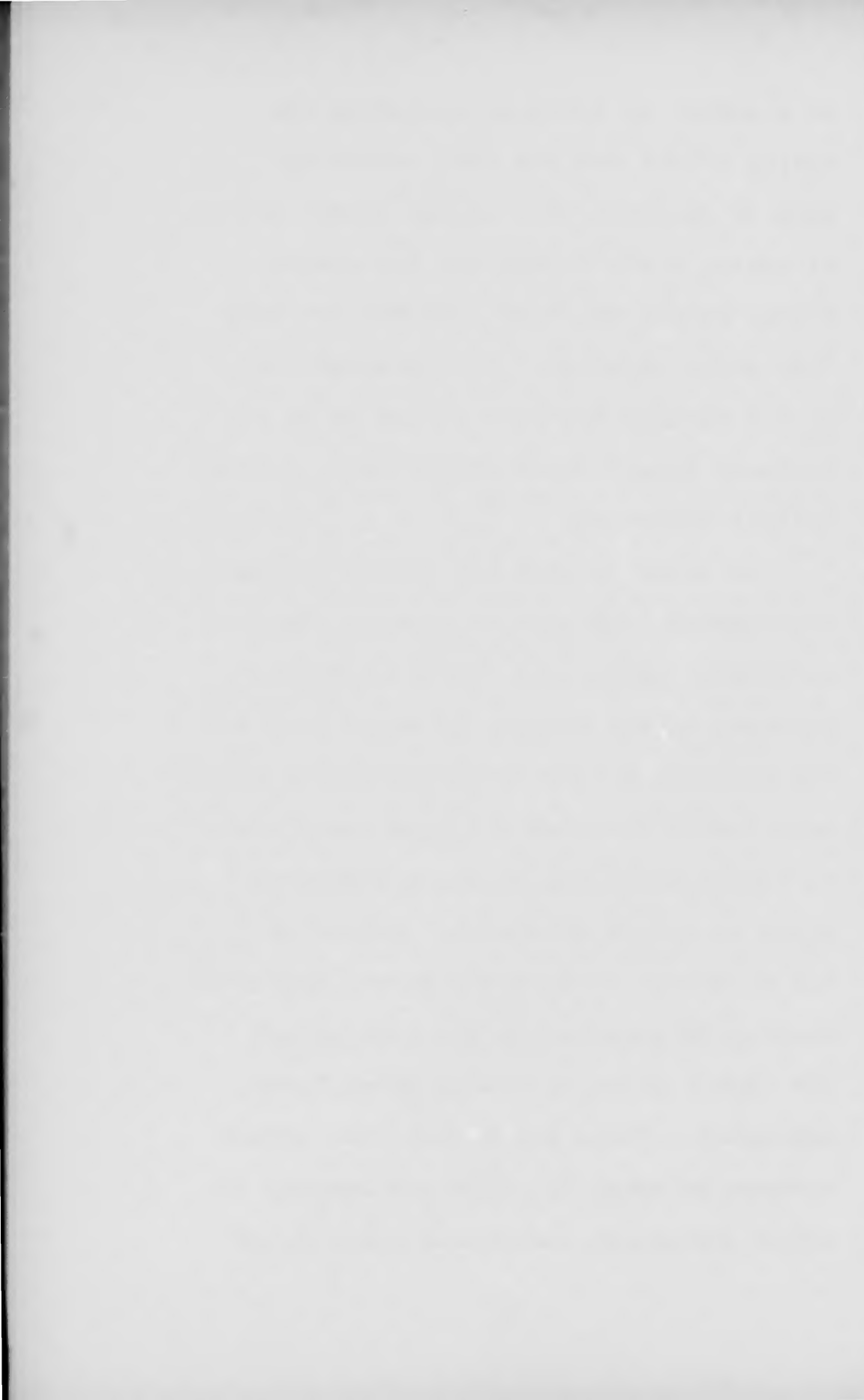
I. THE ECONOMIC AND LEGAL BACKGROUND

John Y. Brown, Jr., when he assumed office in December of 1979 as Governor of Kentucky, faced a budget crisis of substantial proportions. The combination



of a number of factors, including the energy crisis and the then recession, made it apparent that unless prompt action be taken, state income for the coming fiscal period would be \$400 Million less than state revenues. This created the crisis because Sections 49 and 50 of the Kentucky Constitution specifically forbid deficit financing.

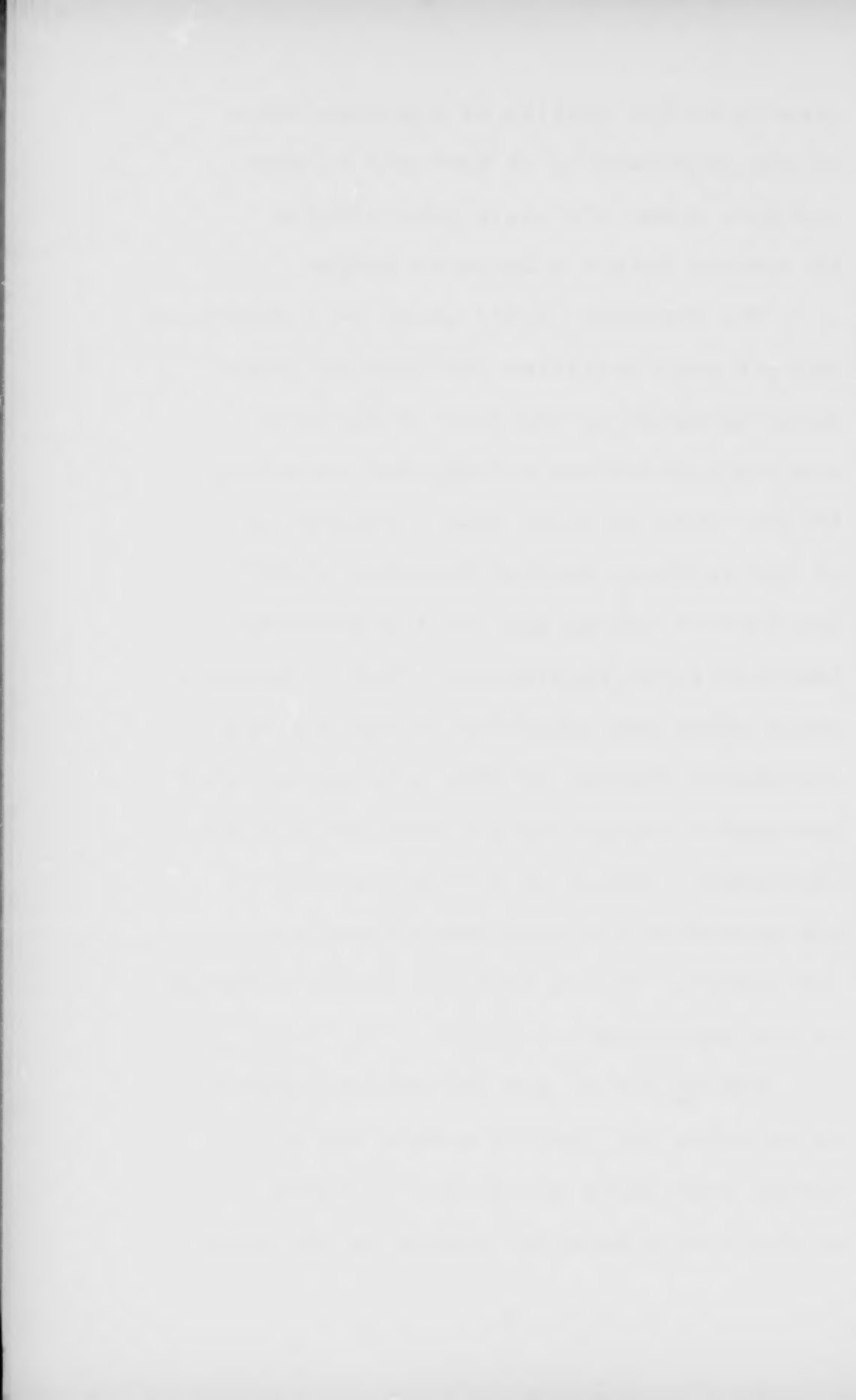
In order to meet the constitutional requirement, and also to promote improved government operations, Governor Brown, pursuant to KRS Chapter 12 which grants the governor authority to reorganize state government, directed all department heads to review their operations and develop plans to reduce personnel. Following the directive of Governor Brown, approximately 30 departments put into effect 254 layoff plans involving about 1,800 employees. These plans went into effect between December 11, 1979 and October 19, 1981. Personnel reductions contributed



greatly to the ability of the government of the Commonwealth of Kentucky to meet its duty under the state constitution to operate within a balanced budget.

The numerous layoff plans were developed and put into operation pursuant to procedures mandated by the laws of Kentucky and the regulations established according to the terms of those laws. Chapter 18 of the Kentucky Revised Statutes ("KRS") and Section 101 et seq. of the Kentucky Administrative Regulations ("KAR"), promulgated under the authority of various provisions of Chapter 18 KRS, provide detailed procedures regulating all aspects of state employment, including hiring, layoff, and providing for both administrative and judicial review of state action relative to its employees.

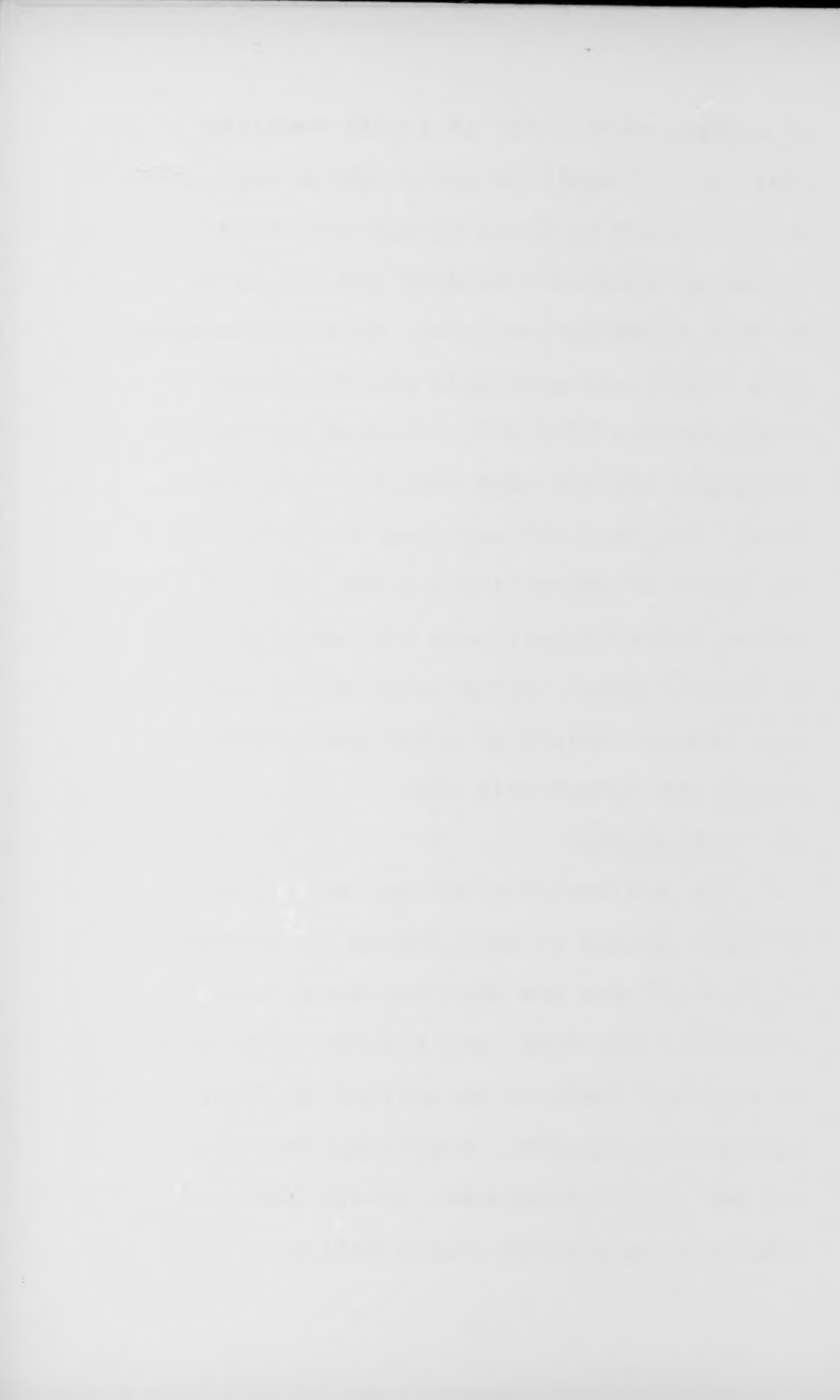
KRS 18.210(4) and 101 KAR:120 specifically allow for layoffs within the merit system when there are a lack of funds or there is a material change in the needs



of a department. KRS 18.210(4) requires that in the layoff of merit system employees, consideration be given to the qualifications, performance, conduct and seniority of each employee involved. Numerous reemployment rights are also made available to those who are laid off. Persons discharged for cause are afforded none of these benefits. The laid off employee also has the right of administrative and judicial review. Petitioners were all advised of these rights. Since other state jobs were scarce, offers of other employment within the system were few.

II. THE LAYOFFS

The 254 layoff plans varied widely in their method of determining who should be laid off and how many employees were involved. The departments differed greatly in size and function as well as in their approach to layoffs. Some departments cut out entire functions, others combined functions, and still others basically

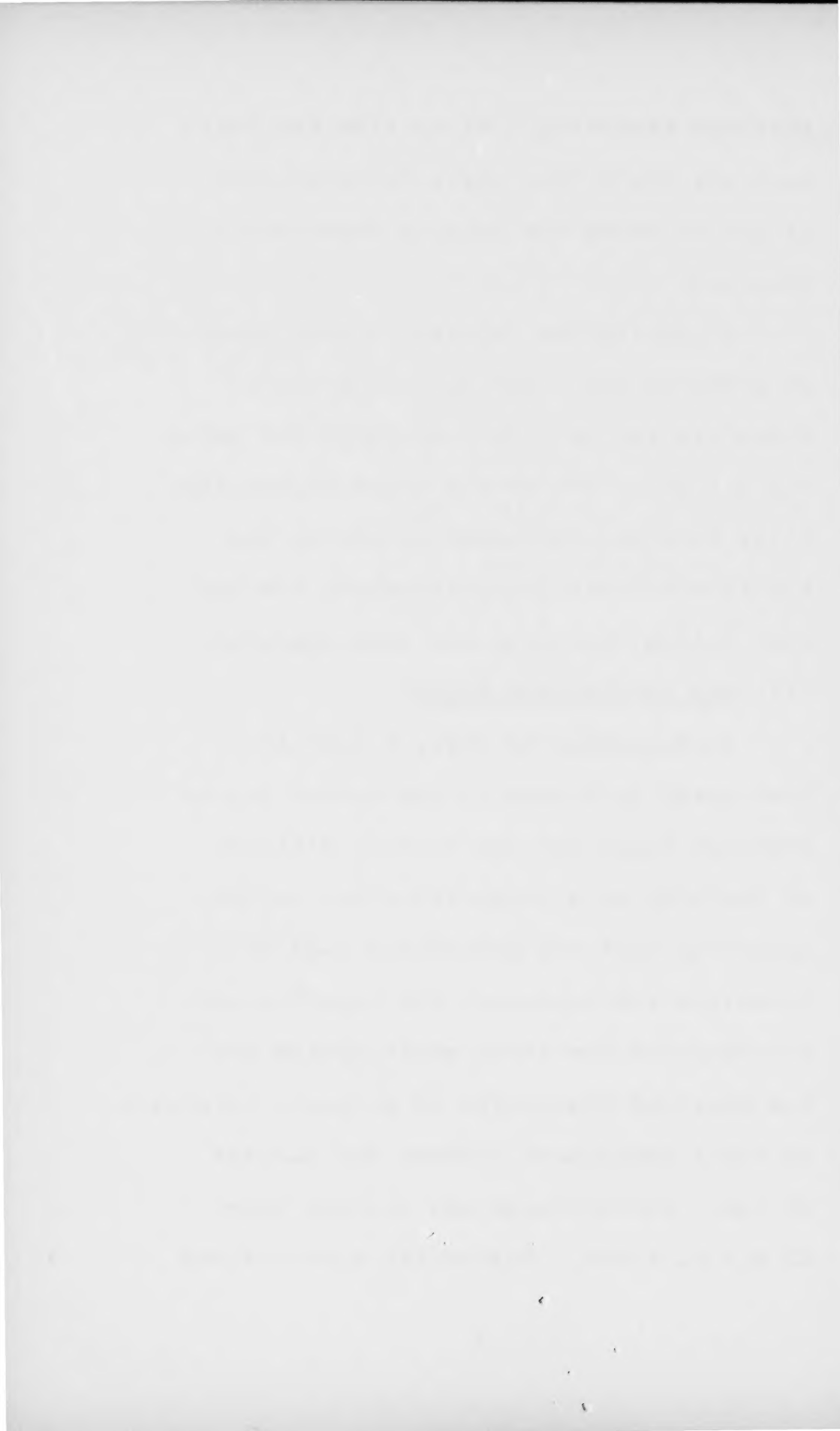


followed seniority. At no time has there been any claim that there was any unity of action among the various departments involved.

Following the layoffs, a good number of affected employees exercised their statutory review rights although the majority did not. One of the named Plaintiffs, Billy Furnish, succeeded in having the Franklin Circuit Court reinstate him and that ruling, in turn, has been appealed.

III. THE PROCEEDINGS BELOW

In September of 1981, Plaintiffs instituted this case in the United States District Court for the Western District of Kentucky as a purported class action, asserting that the procedures used to formulate and implement the layoff plans circumvented the state merit system and had deprived Plaintiffs of property interests in their employment without due process of law. Jurisdiction was claimed under 42 U.S.C. §1983. Plaintiffs also claimed



that the plans had a disparate impact on employees over the age of 40. No allegation of wrongdoing or improper conduct was set out.

On November 16, 1981, prior to answering, Defendants moved to dismiss Counts I through IV¹ of Plaintiffs' Complaint on the grounds that: (i) Plaintiffs' claims against the Commonwealth of Kentucky, and certain of their claims against the individual Defendants, were barred by the Eleventh Amendment to the Constitution of the United States; (ii) Plaintiffs' Complaint failed to state a claim under 42 U.S.C. §1983, because Plaintiffs lacked

¹ Defendants further moved to Dismiss Count V of Plaintiffs' Complaint, alleging violations of the Age Discrimination in Employment Act ("ADEA" 29 U.S.C. § 626), which Motion was denied. Plaintiffs were subsequently denied class certification with respect to the remaining ADEA claims. The remaining claims of two individual Plaintiffs are presently pending before the Western District, and are not addressed in the instant action.

protected liberty and property interests in state employment; and (iii) the individual Defendants, as State Officials, were immune from liability.

On January 28, 1983, the District Court entered an Order dismissing Counts I through IV of Plaintiffs' Complaint. The grounds for the Court's decision were set forth in an extensive Memorandum (the "Memorandum Opinion"), Appendix² B to Petition.

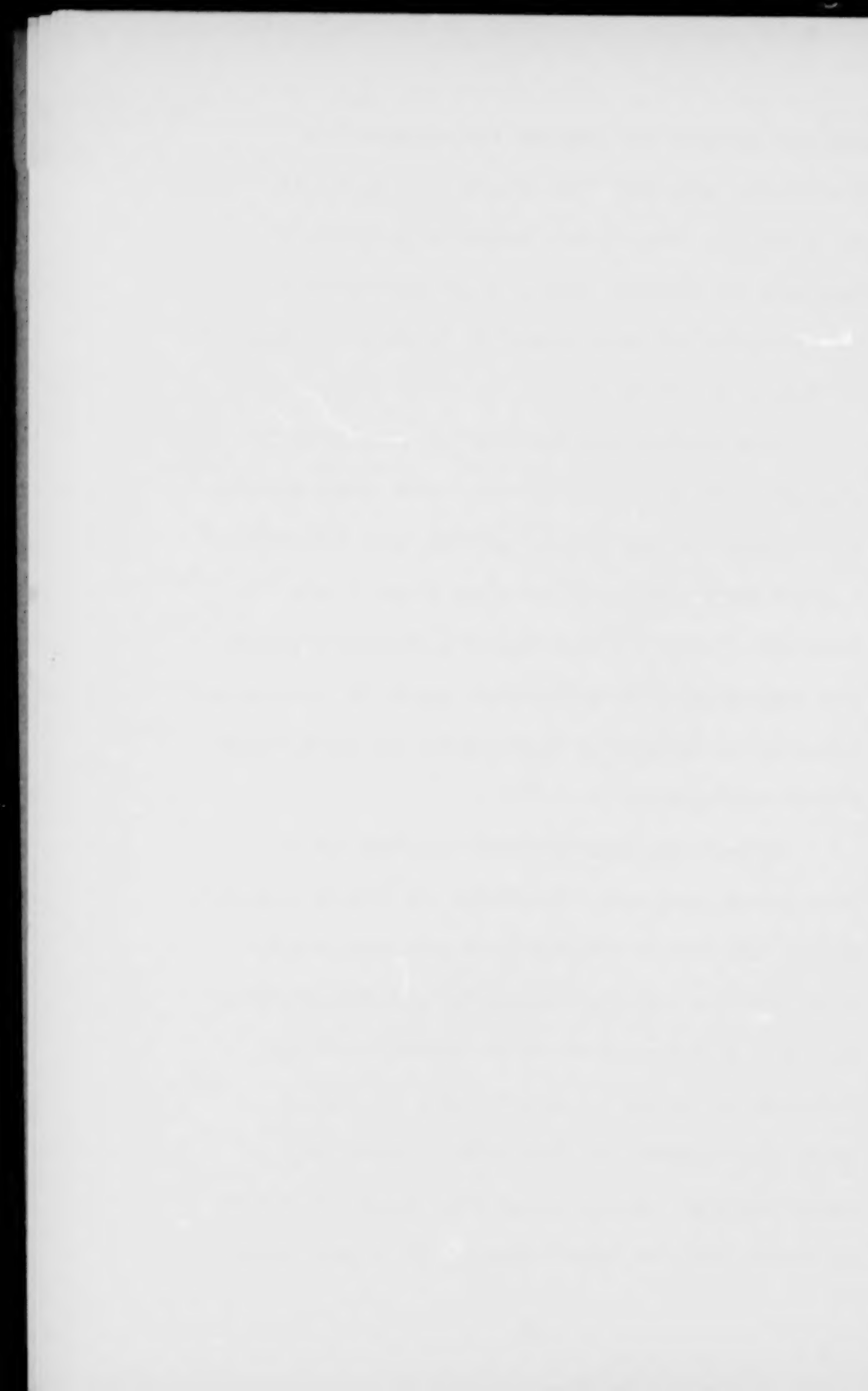
In its Memorandum Opinion, the District Court first concluded that Plaintiffs' claims against the Commonwealth were barred by the Eleventh Amendment to the Constitution of the United States. (App. B to Pet., p. 14(a)). Continuing, the Court found Plaintiffs' claims against all individual State Officers to be barred by the doctrine of qualified immunity, insofar as such

² Appendixes to Petition hereinafter referenced as "App. to Pet."

claims sought to impose retrospective liability against the state. (Id.) In so holding, the Court noted Plaintiff's failure to allege individual wrongdoing on the part of any named defendant. (App. B to Pet., p. 17(a)).

Addressing the merits of Plaintiffs' claims, the District Court held that Plaintiffs had failed to establish any constitutional deprivations arising from their layoffs. (Id.) The Court's determination was based upon Plaintiffs' lack of protected liberty or property interests in continued state employment.

Rejecting Plaintiffs' claims of a protected property interest in state employment, the Court emphasized the statutory distinction between layoffs and discharges. While a discharge must be based upon a finding of cause, layoffs may be based upon any number of factors, including departmental reorganization, lack of funds or work, or the abolishment of a position.

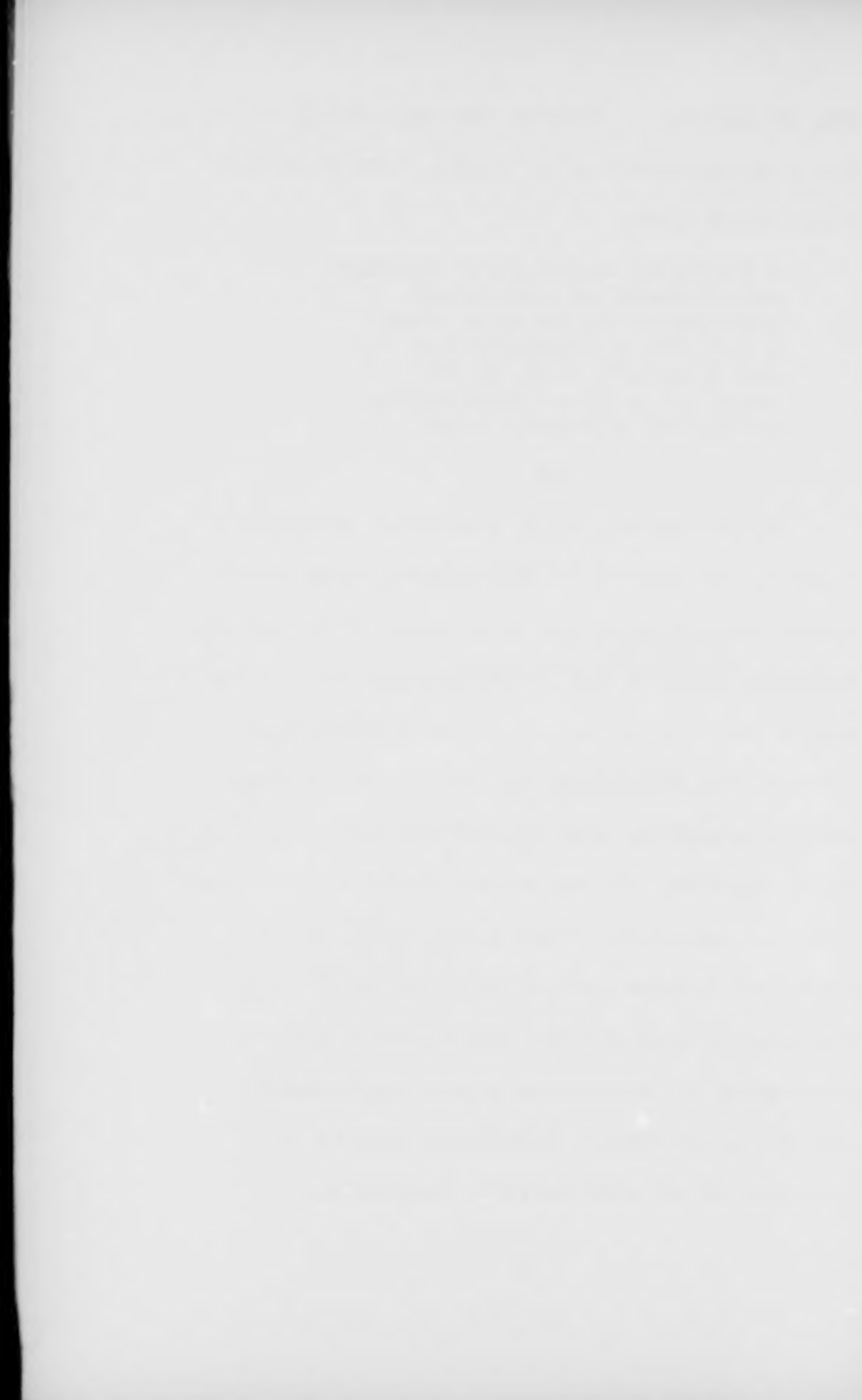


KRS 18.210(14). Absent the necessity for a determination of cause, the District Court held that:

A Kentucky employee's claimed entitlement to continued employment is no more than a unilateral expectation and does not rise to the level of a constitutionally protected property right.

Id.

With respect to Plaintiffs' alleged liberty interests in employment, the Court again relied upon the statutory distinction between layoffs and terminations for cause. While the latter may involve publication of charges affecting an individual's community standing and future employment, mere layoffs, it was held, could not stigmatize an employee, "let alone rise to the level of a deprivation of liberty." (Id.) Finding no protected liberty or property interests in continued state employment, the District Court dismissed Counts I through IV of Plaintiff's Complaint.



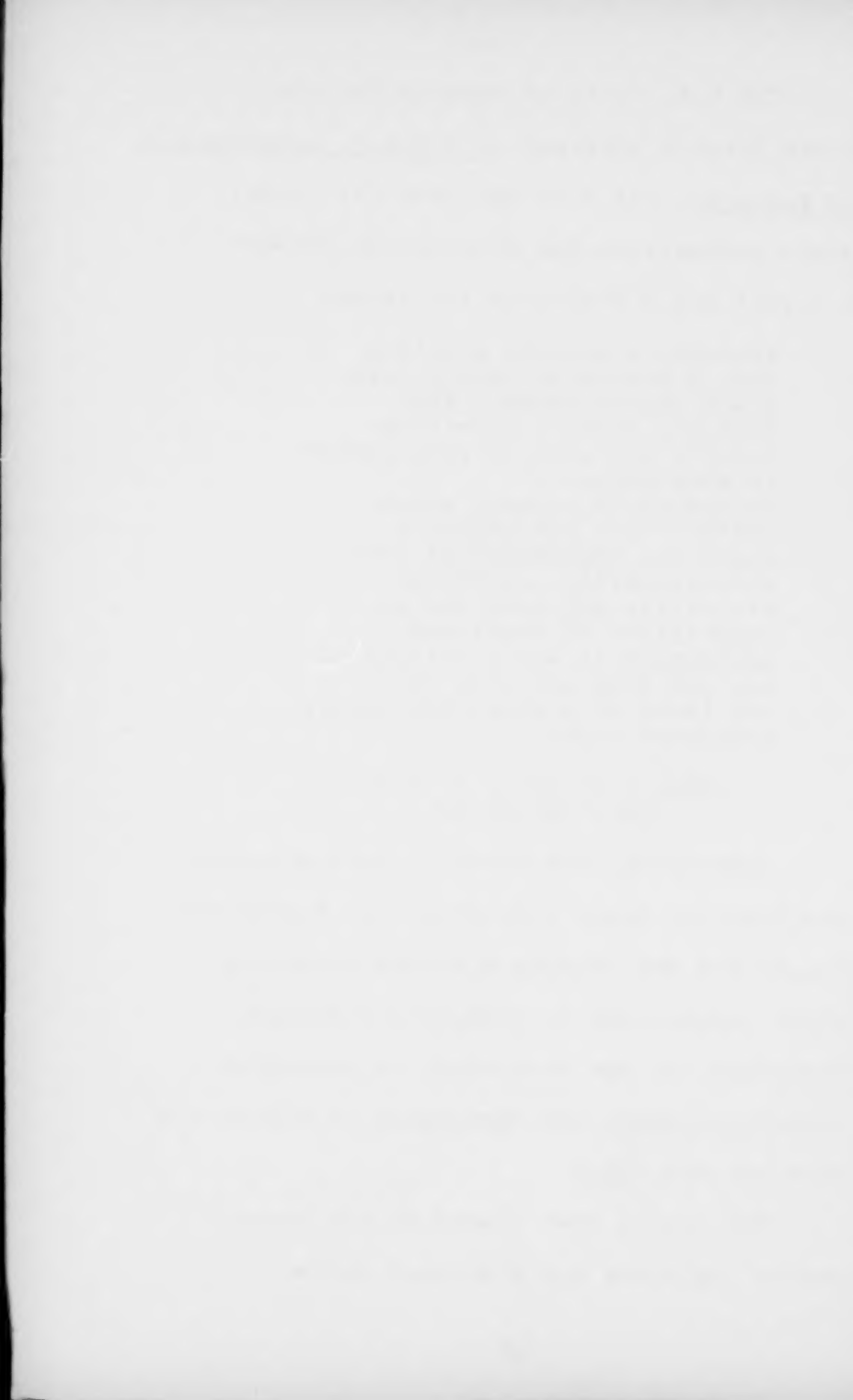
The U.S. Court of Appeals for the Sixth Circuit affirmed in Riggs v. Commonwealth of Kentucky, 734 F.2d 262 (6th Cir. 1984), again emphasizing the distinction between a layoff and a discharge for cause:

Kentucky's statute provides that a discharge cannot take place absent cause. The Kentucky statute governing layoffs contains no requirement to show cause. . . . It is the cause element which confers upon the property right the imprimatur of constitutionality. Although plaintiffs may have had an expectation of continued employment it was a unilateral one and does not rise to the level of a constitutionally protected right.

(App. A to Pet., p. 5(a))
734 F.2d at 265.

Continuing, the Sixth Circuit affirmed the District Court's holding that Plaintiffs' claims did not involve a stigma affecting their reputations or community standing. Therefore, it was concluded, no protected liberty interest was implicated in Plaintiffs' terminations (Id.)

The issues thus framed by the lower courts' opinions are discussed below.



SUMMARY OF ARGUMENT

This case involves no issue sufficient to justify the granting of the writ requested. The Courts below correctly found that Petitioners had no constitutionally protected property or liberty interest in their state employment that could be affected by their being laid off. This case involves only issues of state law and is beyond the jurisdiction of a federal court, especially since there has been no claim of wrongdoing on the part of any Defendant. Petitioners would have the federal courts become review boards for state personnel decisions, a desire that has long been rejected. They also overlook the well settled distinction between a layoff and a discharge for cause.

The Defendants, all high-ranking state officials, possessed qualified immunity. That qualified immunity can only be overcome by showing that even if any federally protected right of Plaintiffs has been violated, that right was clearly established

at the time of official action. No such showing was or can be made here.

REASONS FOR DENYING THE WRIT

I. NO PROPERTY OR LIBERTY RIGHT IS PRESENT IN THIS CASE.

The Petition completely ignores the fact that Petitioners do not possess either property or liberty interests which are subject to protection under the Fourteenth Amendment to the Federal Constitution. This was the prime ground upon which the District Court granted Defendants' motion for judgment and upon which the Court of Appeals affirmed. Petitioners blandly assume that they have either a protected property or liberty interest. However, no facts or law are set out to support this assumption.

A. Petitioners Have No Protected Property Interest in State Employment.

The reliance placed by Petitioners upon Board of Regents v. Roth, 408 U.S. 564 (1972), is misplaced for that case is firm support for the result below. That

opinion demonstrates that property interests which are subject to constitutional protection do not exist in a vacuum. When dealing with state employees, such interests are generally based upon state law and it is that law which determines the nature of the employees' interest. In Roth, the court declared:

To have a property interest in a benefit, a person [must enjoy] . . . a legitimate claim of entitlement to it.

. . . [Such] interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

408 U.S. 564 at 577 (1972)
(footnote omitted).

This view that state law, not the constitution, is the basis of a protected interest was also asserted in Perry v. Sindermann, 408 U.S. 593 (1972), where it was said:

7. We do not now hold that the respondent has any such legitimate claim of entitlement to job tenure. For '[p]roperty interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law. . . .' Board of Regents v. Roth, supra, at 577, 33 L.Ed.2d at 561. If it is the law of Texas that a teacher in the respondent's position has no contractual or other claim to job tenure, the respondent's claim would be defeated.

408 U.S. at 602
(emphasis supplied).

See also, the concurring opinion of Burger, C.J. at 408 U.S. 603.

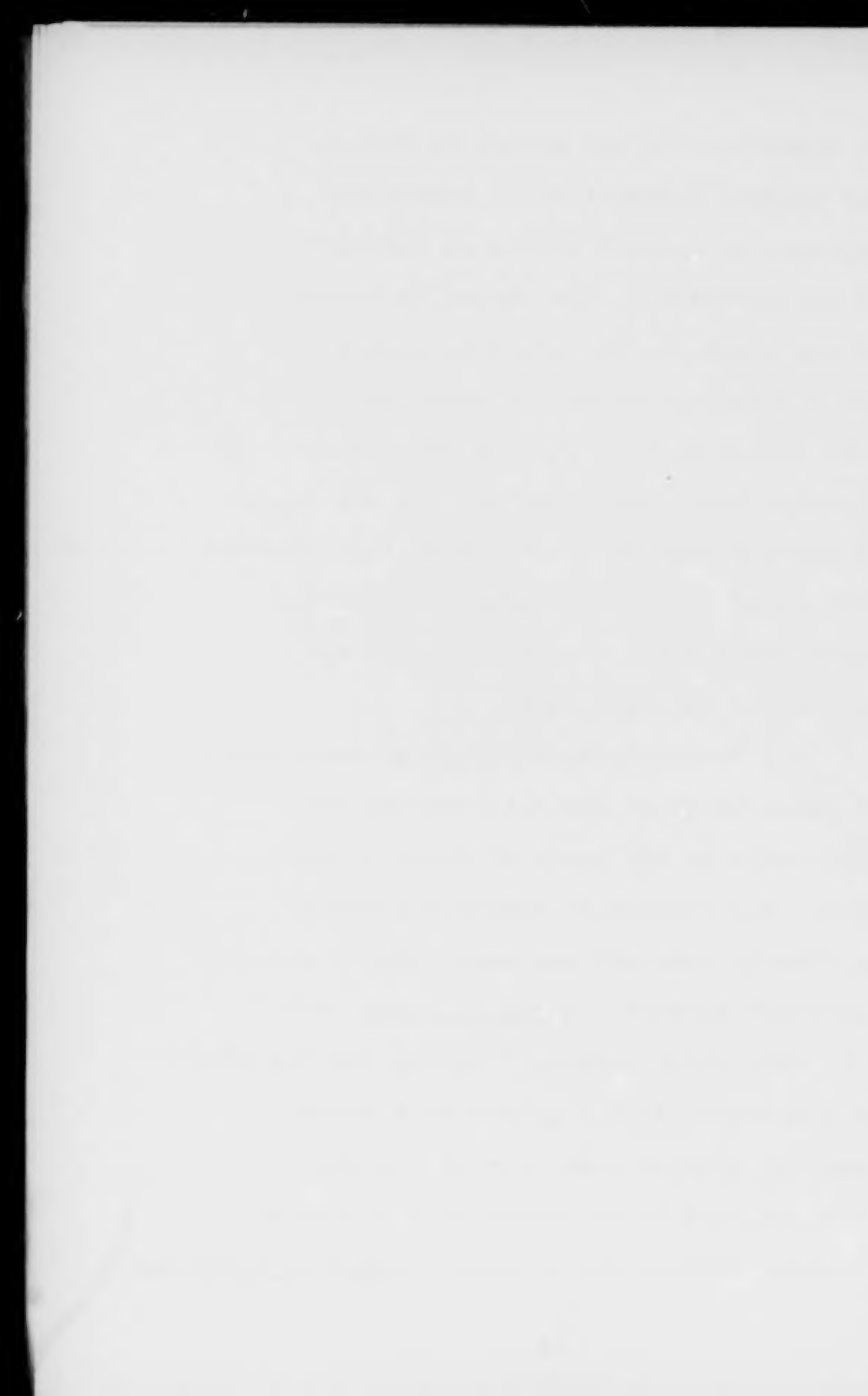
Here it is clear that one's employment by the Commonwealth of Kentucky is specifically made subject to layoff for lack of funds.

KRS 18.210(4) and 101 KAR:120.

The claims of Petitioners as set out in the Complaint are based entirely on allegations of failure to follow state procedure. There are no claims set out in the Complaint or in papers submitted

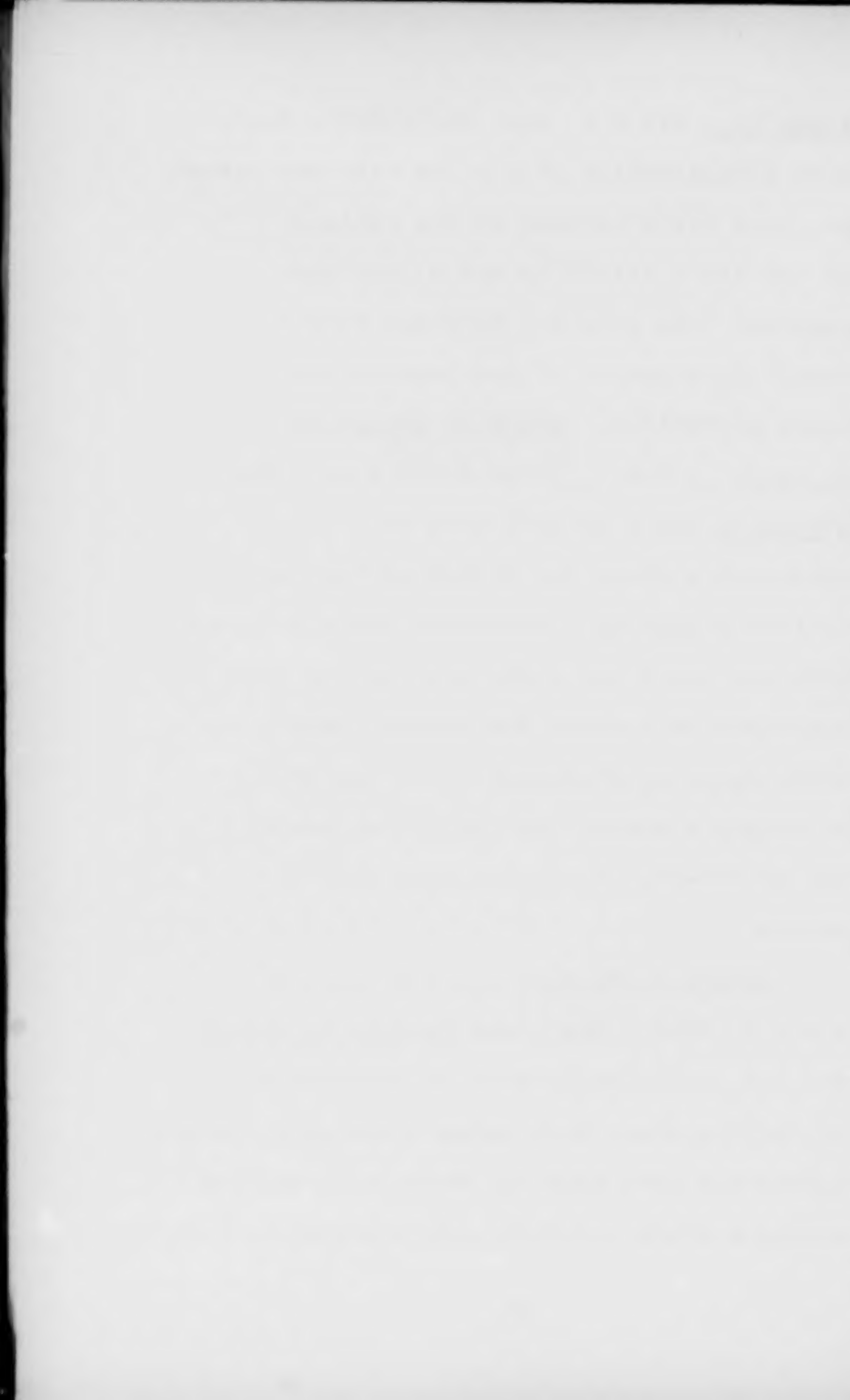
in opposition to the motion to dismiss and summary judgment which assert any improper or suspect action on the part of any Defendant. The record is barren of any claim in the nature of race or sex discrimination or the impairment of free speech or free association. The District Court specifically, and the Court of Appeals impliedly, relied on this admitted absence of invidious conduct in reaching their conclusions that Petitioners did not have a federal claim.

The authorities relied on by Petitioners at pages 14-19 of the Petition are not applicable to the state of facts present here. All involve an admitted property or liberty interest and some type of arguable invidious conduct. Vitek v. Jones, 445 U.S. 480, 490-1 (1980), involved the transfer of a prisoner from a prison to a mental hospital without some type of hearing. This was held to be denial of a protected interest without due process. Logan v. Zimmerman



Brush Co., 455 U.S. 422, 432 (1982), dealt with a termination of a state fair employment practice claim because of the failure of the state itself to act within the required time period. This was held to result in a denial of due process and equal protection. Board of Education v. Vail, __ U.S. __, 104 S.Ct. 2144 (1984), affirming 706 F.2d 1435 (7th Cir. 1983), concerned a claim for breach of contract without a hearing. Plaintiff had a contract with the board for a one year period with assurance of renewal for another year. Under Perry v. Sinderman, this was held to create a common law right that could not be terminated without some form of review.

Hudson v. Palmer, __ U.S. __, 52 U.S.L.W. 5052 (1984), and Parratt v. Taylor, 451 U.S. 527 (1981), give no assistance to Petitioners. Both cases involved prisoners' rights and both held for defendants because adequate state remedies were available.

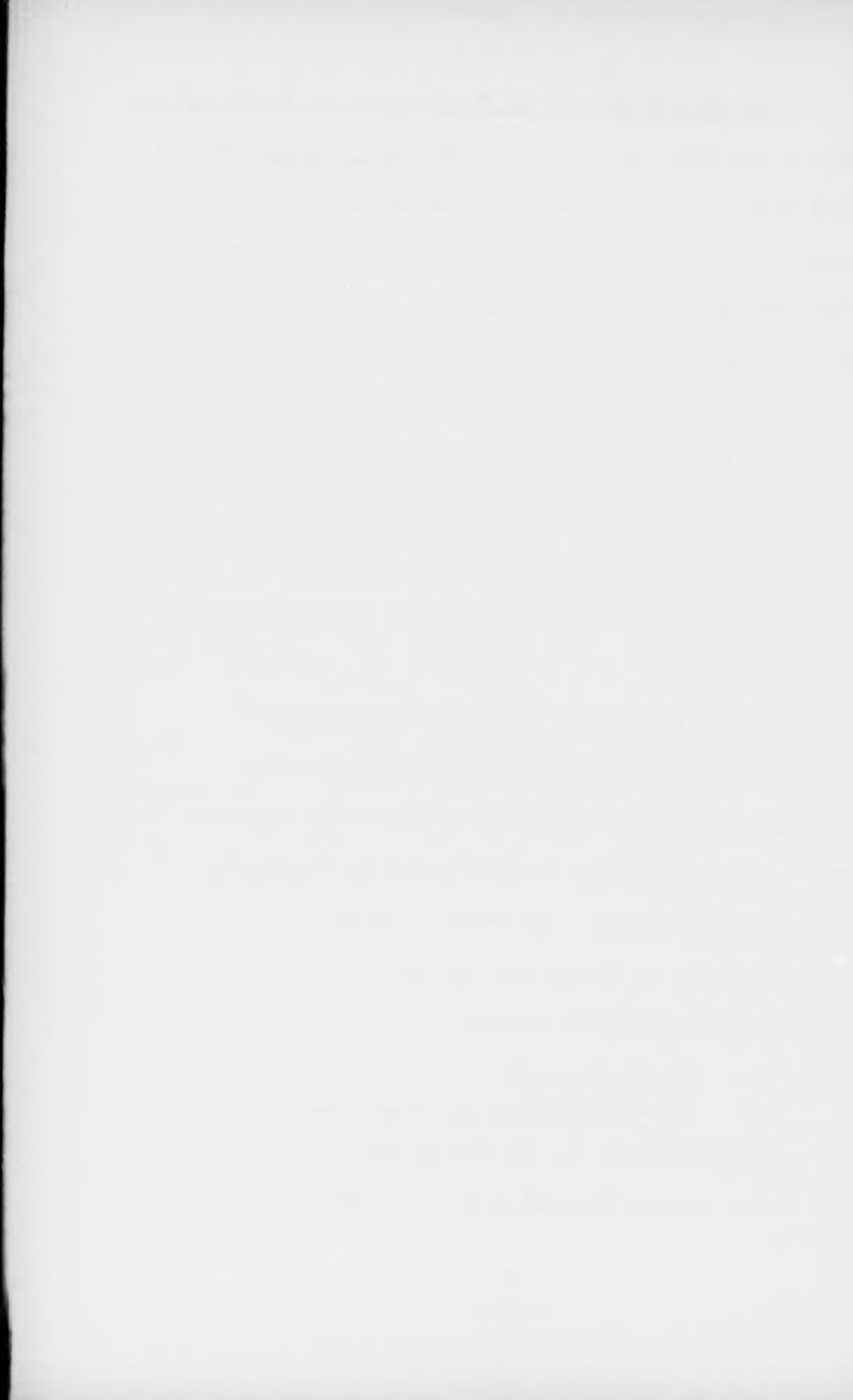


Cleveland Board of Education v. Loudermill, 721 F.2d 550 (6th Cir. 1983), cert granted 104 S.Ct. 2384 (1984), gives no aid or comfort to Petitioners. It is clear from the facts of the case and the "Questions Presented" in the Petition and Cross-Petition for Certiorari that it has no bearing on this case. Loudermill involves a termination for cause (lying on an employment application) and a finding of a property interest in employment. It is not relevant here.

There being be no facts to support an assurance of continued employment but, rather, clear-cut evidence that the employment was expressly conditioned by Kentucky law which permits layoff for lack of funds, the finding of no protected property interest is in all respects correct.

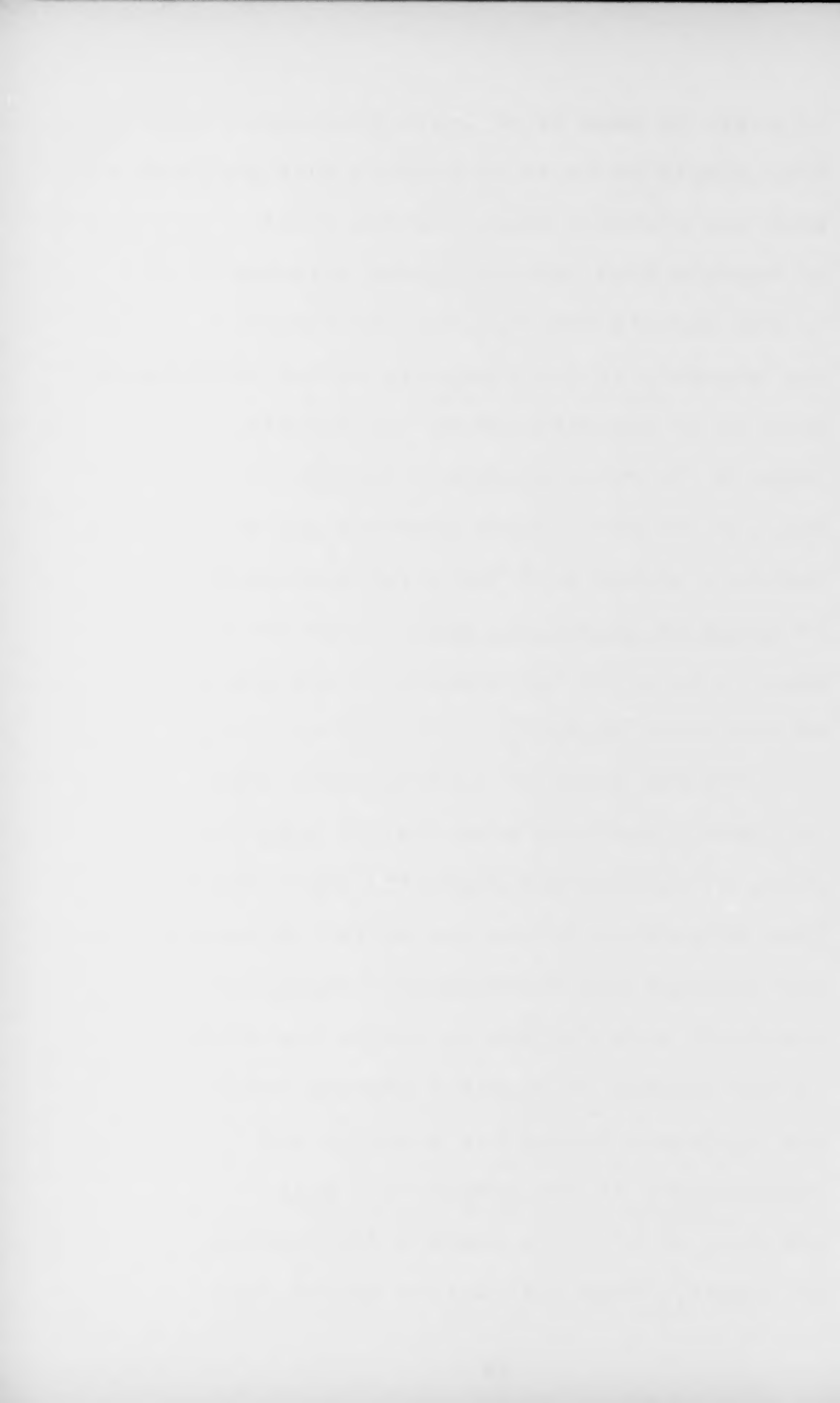
B. No Protected Liberty Interest is Involved.

Petitioners raise the possibility of their being denied a protected liberty



interest at page 14 of their Petition. They supply no facts to support this position. Both the District Court and the Court of Appeals held that no stigma attached to the layoffs and that the reputation and standing in the community of the Petitioners were in no way affected by the layoffs (App. B. to Pet., p. 21(a); App. A. to Pet., p. 11(a)). These holdings are in complete accord with the views expressed in Board of Regents v. Roth. This is especially so in the absence of any claim of invidious conduct.

The Petitioners' liberty claim here is almost identical with that in Roth where it was claimed Plaintiff might be less attractive in the job market because his contract was not renewed. However, the Court held failure to rehire Plaintiff in the absence of specific charges could not seriously damage his standing and associations in the community. Roth, 408 U.S. at 573. To reach a deprivation of liberty, some affirmative action such



as foreclosure of other employment opportunities is required. See generally, Developments in the Law - Public Employment, 97 Harvard L.Rev. 1611 at 1780-1794 (1984). No such activity is present here. In fact, the reverse is true and many rights are made available to laid off employees (App. A to Pet., pp. 5(a)-6(a)).

The entire case of Petitioners is based upon the mistaken view that a layoff for lack of funds or work is the same as a discharge for cause. The difference between discharge and layoff was clearly set out in Fishgold v. Sullivan Dry Dock & Repair Corp., 328 U.S. 275 (1946), where the court said:

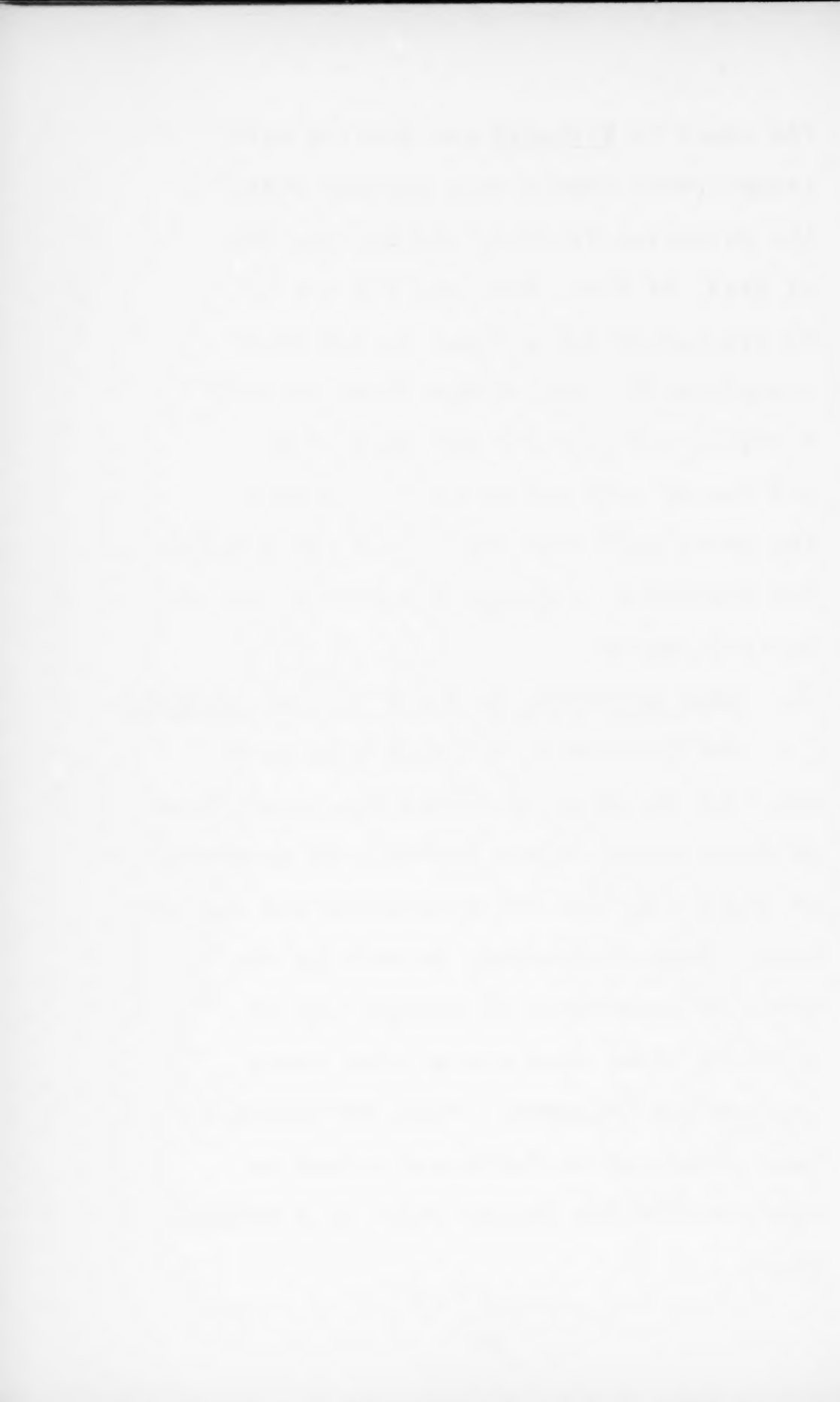
Discharge normally means termination of the employment relationship or loss of a position. In common parlance and in industrial parlance a person who has been laid off by operation of a seniority system and put on a waiting list for reassignment would hardly be considered as having been 'discharged.'

328 U.S. at 286-7
(footnotes omitted).

The court in Fishgold was dealing with reemployment rights of a veteran under the Selective Training and Service Act of 1940, 54 Stat. 885, who was not to be discharged for a fixed period after reemployment. During the fixed period, Fishgold was laid off for lack of work and having less seniority than others. The court held that the layoff was proper. The reasoning in Fishgold supports the decision below.

II. ONLY QUESTIONS OF STATE LAW ARE INVOLVED.

The discussion at pages 8-12 of the Petition in effect concedes that the claims of Petitioners relate entirely to questions of state law, its interpretation and application. That discussion, as well as the Complaint, contains no allegations of anything other than claims that state law was not followed. Thus, Petitioners have presented no facts and raised no issue within the jurisdiction of a federal court.



The Complaint on its face seeks both legal and equitable relief against the state (App. A, pp. 1 - 16). It does not allege any invidious acts by any state official. The claims of petitioners are barred by the Eleventh Amendment to the Constitution. Ford Motor Company v. Department of Treasury, 323 U.S. 459 (1945). The entire case of Petitioners is based on asserted failures to follow state law. The recent opinion in Pennhurst State School & Hospital v. Halderman, ___ U.S. ___, 52 U.S.L.W. 4155 (1984), establishes that the relief sought here is beyond the jurisdiction of a federal court. It was there declared:

A federal court's grant of relief against state officials on the basis of state law, whether prospective or retro-active, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to

state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment.

52 U.S.L.W. at 4159.

What Petitioners seek is to turn the federal courts into a personnel review system for state agencies. This desire was specifically rejected in Bishop v. Wood, 426 U.S. 341, 349-50 (1976). Pennhurst gives additional strength to the reasoning of Bishop v. Wood and makes clear that this case is not within federal jurisdiction.

III. DEFENDANTS' QUALIFIED IMMUNITY BARS THE CLAIM OF PETITIONERS

Petitioners have submitted nothing to indicate that their rights which they claim have been violated were clearly established at the time of the alleged violation. Two courts have held in this case that Petitioners had no rights subject to constitutional protection. It is obvious that whatever rights Petitioner may have, they could not be said to have been clearly

established at the time this case was instituted. In this situation, Davis v. Scherer, ___ U.S. ___, 52 U.S.L.W. 4956 (1984), holds that the qualified immunity of state officials bars the relief here requested.

All but the judgment proof would be deterred from accepting senior positions in state government if state officials who seek to meet the state constitutional requirement of a balanced budget are personally liable for heavy damages if they, in the course of their duties, adopt various methods to reduce state employment and expense which may violate state law. Such a holding is directly counter to that of Davis v. Scherer. The procedure followed by the District Court in this case which as promptly as possible led to final judgment is in accord with that which was approved in Davis v. Scherer where the court said:

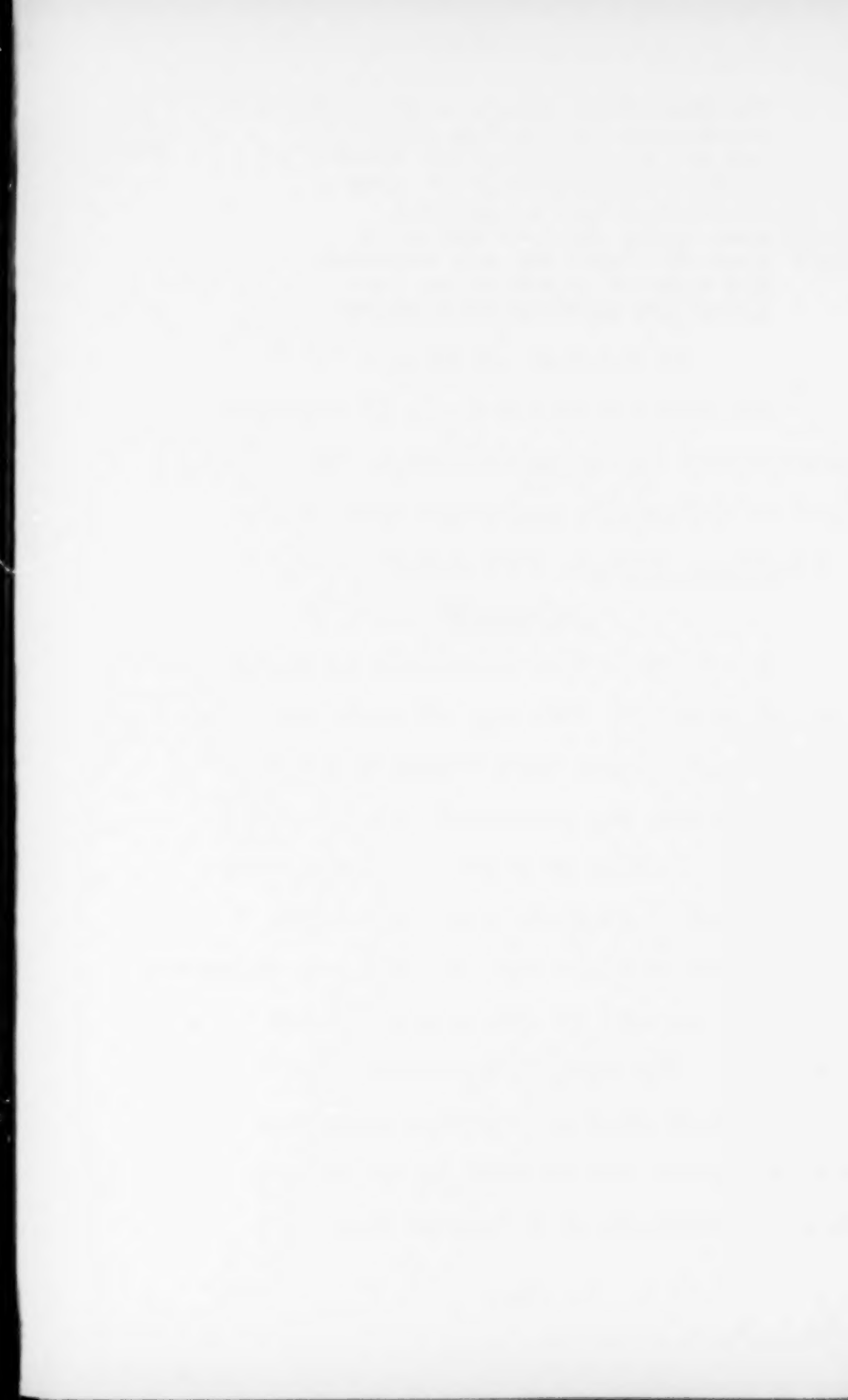
The qualified immunity doctrine recognizes that officials can act without fear of harassing litigation only if they reasonably can anticipate when their conduct may give rise to liability for damages and only if unjustified lawsuits are quickly terminated.

52 U.S.L.W. at 4959.

The absence of any claim of improper activity or invidious misconduct on the part of Defendants makes the application of Davis v. Scherer most compelling.

CONCLUSION

Petitioners have presented no facts to indicate: (1) that any of their constitutional rights have been transgressed or that they had any protected property or liberty interests at stake; (2) that they cannot obtain adequate redress outside the federal system; and (3) that any Defendant acted in any way to lose his qualified immunity. The case of Petitioners is nothing more than an ordinary personnel review matter and as such is not within the jurisdiction of a federal court.



For these reasons, as detailed herein,
the Petition for Writ of Certiorari should
in all respects be denied.

Respectfully submitted,

DONALD H. BALLEISEN
PATRICK A. NEPUTE
DOROTHY M. PITT

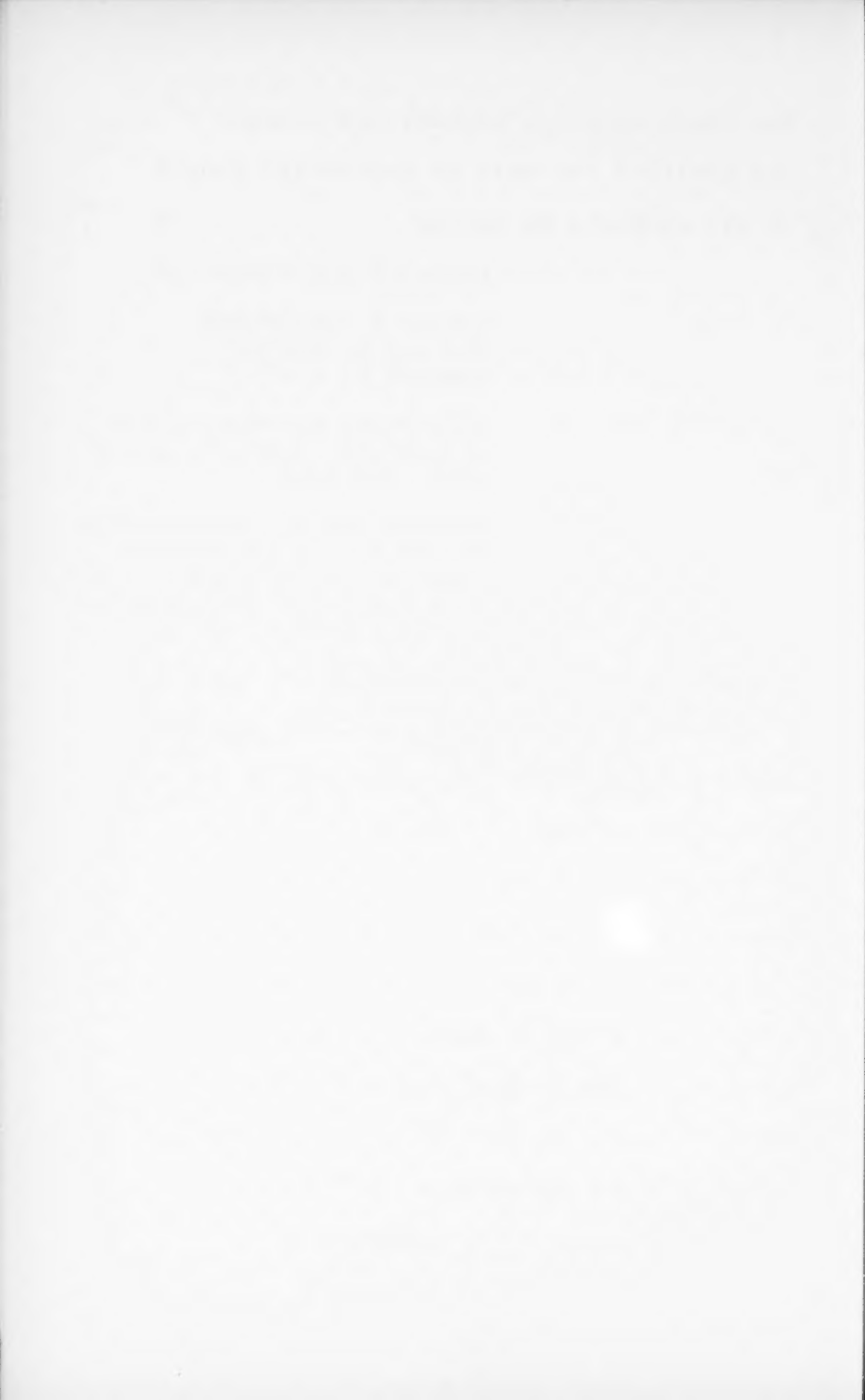
3300 First National Tower
Louisville, Kentucky 40202
(502) 589-4200

COUNSEL FOR ALL RESPONDENTS
EXCEPT PHILIP TALIAFERRO,
LIBBY WALTHALL, JAMES S. WAY,
JACK RAZOR AND JOHN MCNEILL

GREENEBAUM DOLL & McDONALD
Of Counsel

EDITOR'S NOTE

PAGES 1 thru 15 WERE POOR
HARD COPY AT THE TIME OF FILMING.
IF AND WHEN A BETTER COPY CAN BE
OBTAINED, A NEW FICHE WILL BE
ISSUED.



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE, KENTUCKY

SHELBY E. RIGGS,
SARAH S. HAMMONDS,
MORRISON L. COOKE,
JACK G. GREENE,
HARVIN COLE,
W. JAUE JAGGERS,
EDWARD SPENCER,
LLOYD R. RYLES, SR.,
LOIS G. SMITH,
KYLE W. BALL,
DORIS S. PEARMAN,
THOMAS L. JASPER,
RALPH MURPHY,
MARJORIE J. RALSTON,
PAUL E. CAMPLIN,
RITA M. McMAHON,
BILLY T. FURNISH,
RUTH M. MAYEUX,
ANN M. PEEB,
CATHERINE A. HAYDEN,
DAVIS L. JACKSON, Sr.,
G. L. JACKSON,
EARL B. HOWARD,
PHYLLIS J. EGGER,
MARY H. PETER,
JAMES M. FULLER, JR.,
GLENN H. HOWELL,
F. GAYLE HAVENS,
JOHN J. THOMAS,
PATRICIA A. TERRY,
MARTHA R. BROWN,
JAMES M. HUFFINES, SR.,
W. KENNETH KEOWN,
DOROTHY I. HOSKINS,
WILLIAM G. CARVER, JR.,
GARY WOOLDRIDGE,
JACK D. WALKER,
CHARLES E. DAVIS,
KELLY M. DANIELS,
JAMES C. BROWN,
LARRY V. SHOEMAKER,
ALBERT F. SPERATH,

On behalf of themselves and all
others similarly situated.

PLAINTIFFS

vs.

COMMONWEALTH OF KENTUCKY
State Capitol
Frankfort, Kentucky 40601

SERVE:
Steven L. Beshear
Attorney General
Commonwealth of Kentucky
State Capitol Building
Frankfort, Kentucky 40601

and

JOHN Y. BROWN, JR., Governor
Commonwealth of Kentucky
State Capitol
Frankfort, Kentucky 40601

and

CIVIL ACTION NO.

COMPLAINT 85-0.544-LB



LEE MAYNARD, Commissioner
Kentucky Department of Personnel
and Secretary
Kentucky Personnel Board
Capitol Annex
Frankfort, Kentucky 40601

and

PHILLIP TALIAFERRO, Chairman
Kentucky Personnel Board
Capitol Annex
Frankfort, Kentucky 40601

and

LIBBY WALTHALL, Vice-Chairman
Kentucky Personnel Board
Capitol Annex
Frankfort, Kentucky 40601

and

JAMES S. WAY, Member
Kentucky Personnel Board
Capitol Annex
Frankfort, Kentucky 40601

and

JACK RAZOR, Member
Kentucky Personnel Board
Capitol Annex
Frankfort, Kentucky 40601

and

JOHN W. MCNEILL, Member
Kentucky Personnel Board
Capitol Annex
Frankfort, Kentucky 40601

and

W. GRADY STUMBO, Secretary
Kentucky Department for Human Resources
DHR Building
Frankfort, Kentucky 40621

and

BRUCE LUNSFORD, Secretary
Kentucky Commerce Cabinet
Capital Plaza Tower
Frankfort, Kentucky 40601

and

FRANK R. METTS, Secretary
Kentucky Department of Transportation
Frankfort, Kentucky 40622

and

JACKIE SWIGART, Secretary
Kentucky Department for Natural Resources
and Environmental Protection
Capital Plaza Office Tower
Frankfort, Kentucky 40601

and

JOHN R. GROVES, JR., Commissioner
Kentucky Department of Housing,
Buildings and Construction
U.S. 127 South
Frankfort, Kentucky 40601

and

ROBERT M. ALLPIN, Commissioner
Kentucky Department of Revenue
Frankfort, Kentucky 40601

and

GEORGE L. ATKINS, Secretary
Kentucky Department of Finance
New Capitol Annex
Frankfort, Kentucky 40601

and

DON MILLS, Secretary
Kentucky Education and Humanities Cabinet
Capital Plaza Tower
Frankfort, Kentucky 40601

and

LOIS MATEUS, Commissioner
Kentucky Department of the Arts
2200 Capital Plaza Tower
Frankfort, Kentucky 40601

and

JAMES A. NELSON, State Librarian
Kentucky Department of Library and Archives
Frankfort, Kentucky 40602

and

RAYMOND BARBER,
Superintendent of Public Instruction
Kentucky Department of Education
Capital Plaza Tower
Frankfort, Kentucky 40601

and

ROGER PETERMAN, Executive Director
Kentucky Development Finance Authority
Suite 300
State National Bank Building
Frankfort, Kentucky 40601

and

NEIL J. WELCH, Secretary
Kentucky Department of Justice
Frankfort, Kentucky 40601

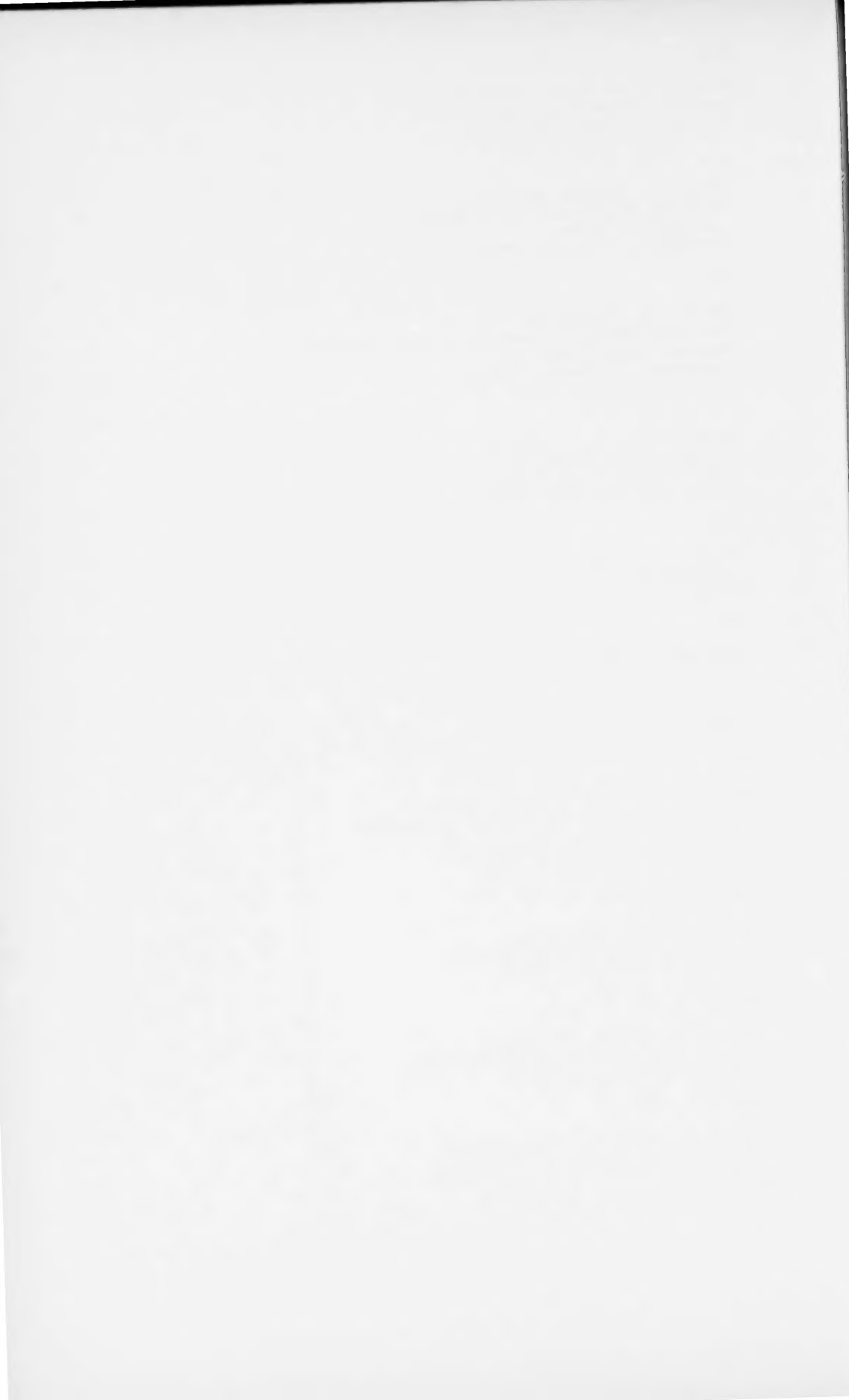
and

GEORGE W. WILSON, Secretary
Kentucky Department of Corrections
Frankfort, Kentucky 40601

and

DANIEL D. BRISCOE, Commissioner
Kentucky Department of Insurance
P. O. Box 571, 151 Elkhorn Court
Frankfort, Kentucky 40602

and



RICHARD W. LEMER, Commissioner
Kentucky Department of Alcoholic
Beverage Control
123 Walnut Street
Frankfort, Kentucky 40601

and

JOSEPH R. BELL, Executive Vice President
Kentucky Fair and Exposition Center
P. O. Box 21179
Louisville, Kentucky 40221

and

BILLY G. WELLMAN, Adjutant General
Kentucky Department of Military Affairs
Frankfort, Kentucky 40601

and

ANDREW "SKIPPER" MARTIN, Commissioner
Kentucky Department of Community and
Regional Development
Capital Plaza Tower
Frankfort, Kentucky 40601

and

GEORGE FISCHEK, Secretary
Kentucky Personnel and Management Cabinet
Capitol Annex
Frankfort, Kentucky 40601

and

MIKE ROBINSON,
Director of Administrative Control
Kentucky Department of Personnel
Frankfort, Kentucky 40601

and

MATTHEW J. AMATO, JR., Director
Division of Personnel Management
Kentucky Department for Human Resources
Frankfort, Kentucky 40621

and

RITA YOUNG, Acting Director
Office of Personnel Management
Division of Personnel
Kentucky Department of Transportation
Frankfort, Kentucky 40622

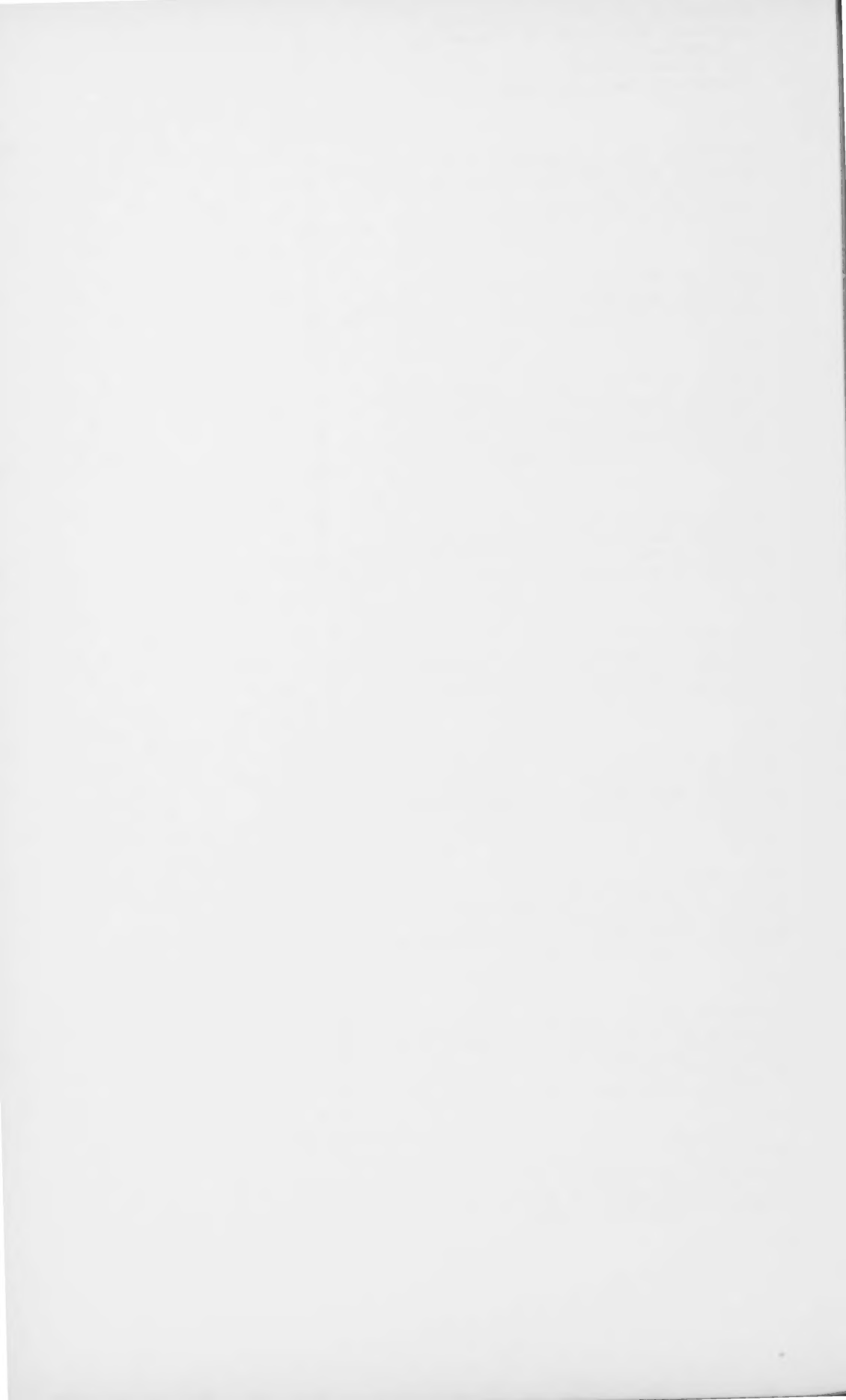
and

ERNEST P. FOWLER, Acting Director
Division of Management Services
Kentucky Department of Finance
New Capitol Annex
Frankfort, Kentucky 40601

and

VERT TAYLOR
Director of Personnel
Kentucky Department of Education
Frankfort, Kentucky 40601

and



Division of Water Quality
Kentucky Department for Natural Resources
and Environmental Protection
Century Plaza
1065 U.S. 127 Bypass South
Frankfort, Kentucky 40601

and

JAMES E. STEWART, Director
Division of Management Services
Kentucky Personnel and Management Cabinet
Capitol Annex
Frankfort, Kentucky 40601

and

WILLARD STANLEY, Commissioner
Kentucky Department of Mines and
Minerals
P. O. Box 680
Lexington, Kentucky 40589

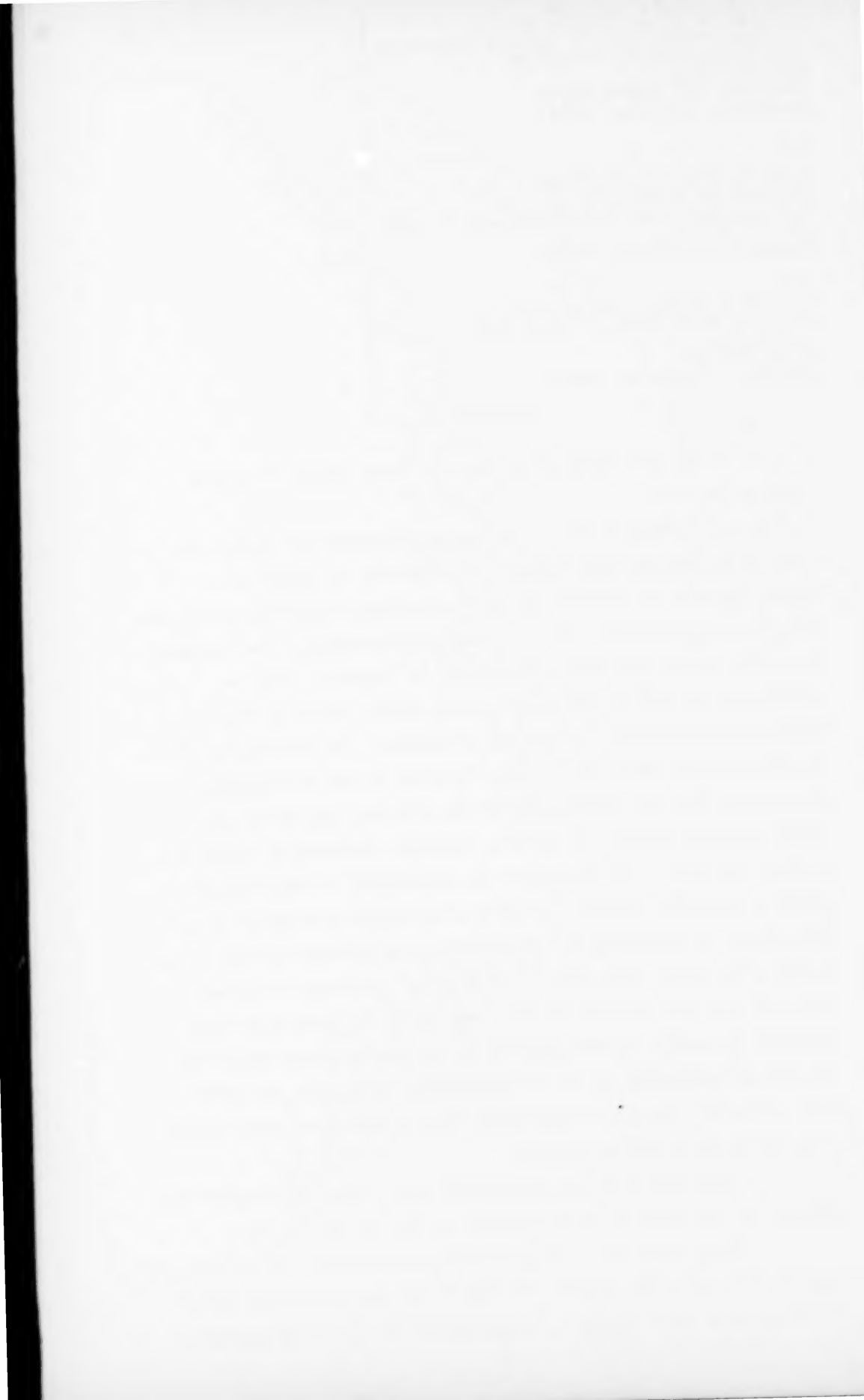
DEFENDANTS

Come the Plaintiffs, and for their cause of action,
state as follows:

1. This is an action for declaratory and injunctive relief and compensatory damages. Plaintiffs on behalf of themselves and all others similarly situated, challenge herein the procedures of the Kentucky Department of Personnel, the Kentucky Personnel Board, and the Commonwealth of Kentucky, and the procedures of each of the named agency Heads, Secretaries, Commissioners and/or other state officials. The procedures in controversy are those which were followed in the development, formulation and implementation of the official lay-off plans in which employee seniority, service records, performance appraisals, conduct and qualifications were not considered in determining the order of lay-off; career employees with status and seniority did not revert to positions in their designated classification in the agency from which they were terminated or adversely affected; agencies did not attempt to place employees in other positions (whether filled or vacant) for which the employee was qualified; and career employees on the re-employment lists were not given full consideration for reemployment before vacancies were filled from the competitive registers.

Such policies and procedures had a disparate impact upon plaintiffs who were between the ages of 40 and 70.

Such practices and procedures contravene, inter alia, KRS 18.210 (14); KRS 18.217; 101 KAR 1:120, Section 2 (2) and (3); Kentucky case law: Avers v. Personnel Board of the Commonwealth



of Kentucky, (Ky. App. 1981) 28 KLS 9 (Petition for Rehearing filed: July 21, 1981); 42 USC Section 1983; 29 USC Section 626 (c); and the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 USC Section 1343 (3); 28 USC Section 1343 (4); the Civil Rights Act 42 USC Section 1983; 29 USC Section 626; 28 USC Section 2201 and 2202; Rules 57 and 65 of the Federal Rules of Civil Procedure; and the doctrine of pendent jurisdiction. The amount in controversy exceeds \$10,000.00 exclusive of interest and costs.

3. This action may be brought in the Western District of Kentucky, pursuant to 28 USC §1391 because the claim arose in this district.

PARTIES

PLAINTIFFS

4. Each of the Plaintiffs is a citizen of the United States of America, a resident of the Commonwealth of Kentucky, a present or former merit system employee of said Commonwealth, and each was placed on an official departmental lay-off plan and adversely effected in said employment; all in violation of the laws of said Commonwealth.

5. Plaintiffs' names, ages, department of State Government in which employed, last position held therein, effective date of lay-off or adverse action and number of years of service with said Commonwealth, are as follows:

A. Shelby E. Riggs, 56, Department of Transportation, January 15, 1980, 26 years.

B. Sarah S. Hammonds, 55, Department for Human Resources, May 15, 1980, 27 years and 6 months.

C. Morrison L. Cooke, 67, Department of Human Resources, June 20, 1980, 27 years and 6 months.

D. Jack G. Greene, 56, Department for Human Resources, June 20, 1980, 23 years and 7 months.

E. Marvin Cole, 55, Department for Human Resources, May 15, 1980, 22 years.

F. E. Jane Jagers, 59, Department for Human Resources, May 15, 1980, 20 years and 6 months.

G. Edward Spencer, 50, Department for Natural Resources and Environmental Protection, June 15, 1980, 19 years and 10 months.

H. Lloyd R. Nyles, 54, Department of Transportation, August 6, 1980, 18 years.

I. Lois G. Smith, 42, Department for Human Resources, May 15, 1980, 17 years 11 months.

J. Kyle W. Ball, 54, Department of Transportation, May 30, 1980, 17 years and 10 months.

K. Doris S. Pearman, 57, Department for Human Resources, May 15, 1980, 17 years and 9 months.

L. Thomas L. Jasper, 57, Department of Revenue, March 31, 1980, 17 years and 6 months.

M. Ralph Murphy, 56, Department of Transportation, July 15, 1980, 17 years and 6 months.

N. Marjorie J. Ralston, 41, Department of Library and Archives, August 15, 1980, 17 years.

O. Paul E. Camplin, 59, Department of Tourism, March 6, 1980, 17 years.

P. Rita M. McMahon, 57, Department for Human Resources, June 20, 1980, 16 years and 10 months.

Q. Billy T. Furnish, 51, Department of Tourism, March 6, 1980, 16 years and 7 months.

R. Ruth M. Mayeux, 34, Department for Local Government, September 15, 1980, 15 years and 4 months.

S. Ann M. Peel, 49, Department of Commerce, January 4, 1980, 15 years.

T. Catherine A. Hayden, 57, Department of Housing, Buildings and Construction, April 30, 1980, 13 years and 11 months.

U. Davis L. Jackson, Sr., 55, Department of Transportation, June 16, 1980, 13 years and 5 months.

V. G. L. Jackson, 33, Department for Human Resources, May 16, 1980, 12 years and 7 months.

W. Earl B. Howard, 50, Department of Transportation, May 31, 1980, 12 years and 6 months.

X. Phyllis J. Eggen, 41, Department of Transportation, September 19, 1980, 12 years and 6 months.

Y. Mary H. Peter, 38, Department for Human Resources, May 15, 1980, 11 years and 11 months.

Z. James M. Fuller, Jr., 39, Department of Finance, August 15, 1980, 11 years.

AA. Glenn H. Howell, 57, Department of Housing, Buildings and Construction, April 30, 1980, 11 years.

BB. F. Gayle Havens, 40, Department of Transportation, December 31, 1980, 11 years.

CC. John J. Thomas, 49, Department of Housing, Buildings and Construction, April 30, 1980, 9 years and 6 months.

DD. Patricia A. Terry, 30, Department for Human Resources, May 15, 1980, 8 years and 8 months.

EE. Martha R. Brown, 33, Department for Human Resources, May 15, 1980, 8 years and 4 months.

FF. James M. Huffines, Sr., 55, Department for Human Resources, May 15, 1980, 8 years.

GG. W. Kenneth Keown, 36, Department of Education, June 20, 1980, 7 years and 6 months.

HH. Dorothy I. Hoskins, 31, Department for Human Resources, May 15, 1980, 7 years and 4 months.

II. William G. Carver, Jr., 47, Department for Human Resources, May 15, 1980, 7 years.

JJ. Gary W. Wooldridge, 29, Department of Transportation, July 15, 1980, 7 years.

KK. Jack D. Walker, 55, Department for Human Resources, May 15, 1980, 6 years and 11 months.

LL. Charles E. Davis, 29, Department for Human Resources, May 15, 1980, 6 years and 9 months.

MM. Kelly M. Daniels, 67, Department of Transportation, September 19, 1980, 6 years and 4 months.

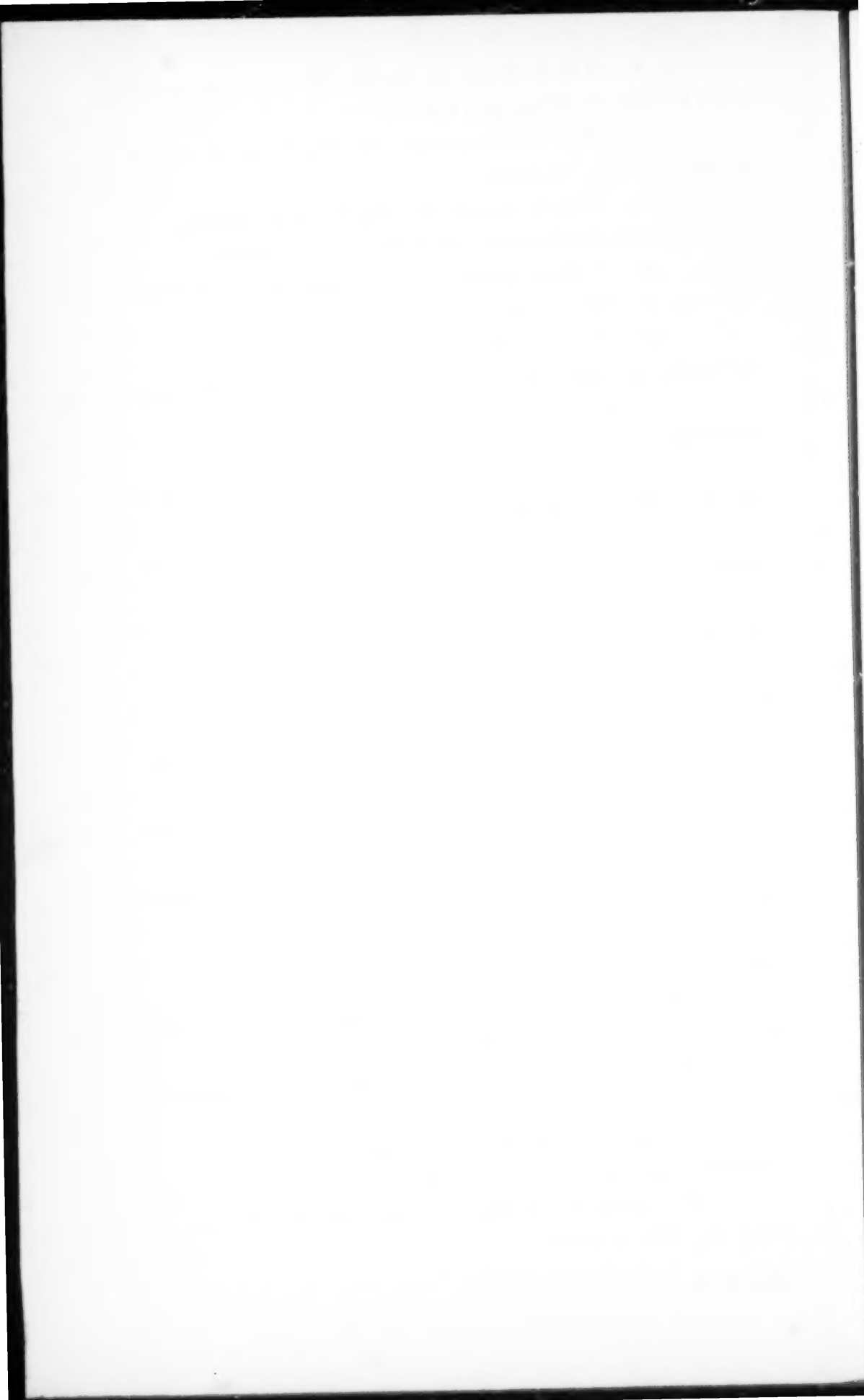
NN. James C. Brown, 45, Department for Human Resources, June 20, 1980, 5 years.

OO. Larry V. Shoemaker, 44, Department of Transportation, April 30, 1980, 5 years.

PP. Albert F. Sperath, 37, Department of the Arts, August 31, 1981, 5 years.

DEFENDANTS

6. Defendant John T. Brown, Jr. who is sued



individually and in his official capacity, is the Governor of the Commonwealth of Kentucky, and in that capacity has the ultimate authority for employment of state personnel.

7. Defendant Dee Haynard, who is sued individually and in her official capacity, is the Commissioner of the Department of Personnel and is Secretary to the Kentucky Personnel Board, Commonwealth of Kentucky, and in that capacity administers and authorizes all employment procedures within state government and the Department of Personnel, makes recommendations to department officials and to the Kentucky Personnel Board regarding decisions affecting Plaintiffs' employment.

8. Defendants Phillip Taliaferro, Libby Walthall, James S. Way, Jack Razor and John W. McNeill who are sued individually and in their official capacities are the Chairman and members of the Kentucky Personnel Board, Commonwealth of Kentucky, and in that capacity have ultimate authority for the lawful and proper implementation and execution of lay-off plans; and determining that such a plan is in the best interest of state government and the citizens of the Commonwealth of Kentucky.

9. Defendant Department or Cabinet Secretaries W. Grady Stumbo, Bruce Lunsford, Frank R. Metts, Jackie Swigart, George L. Atkins, Don Mills, George Wilson, Andrew "Skipper" Martin, George Fischer and Neil Welch, who are sued individually and in their official capacities and in such capacities they exercise(d) authority for employment of department of cabinet personnel.

10. Defendant Department Commissioners John R. Groves, Jr., Robert H. Allphin, Lois Mateus, Williard Stanley, Daniel Briscoe, and Richard H. Lewis, who are sued individually and in their official capacities and in such capacities they exercise(d) authority for employment of department personnel.

11. Defendant Executive Directors Roger Peterman and James A. Nelson, who are sued individually and in their official capacities and in such capacities they exercise(d) authority for employment of agency personnel.

12. Defendant Raymond Barber, who is sued individually and in his official capacity is the Superintendent of Public Instruction and in that capacity has authority for employment of Department of Education personnel.



13. Defendant Joseph R. Bell who is sued individually and in his official capacity is Executive Vice President of the Kentucky Fair and Exposition Center and in that capacity has authority for employment of the Fair and Exposition Center personnel.

14. Defendant Billy G. Wellman who is sued individually and in his official capacity is the Adjutant General of the Department of Military Affairs and in that capacity has authority for employment of department personnel.

15. Defendant Mike Robinson who is sued individually and in his official capacity as the Director of Administrative Control of the Department of Personnel and in that capacity has authority for employment of state personnel.

16. Defendant Department Division Directors Matthew J. Amato, Jr., Rita Young, Ernest P. Fowler, Vert Taylor, Robert E. Blanz and James E. Stewart who are sued individually and in their official capacities and in such capacities they exercise(d) authority for employment of agency personnel.

17. As a result of the reorganization of Kentucky State Government, the names and positions of individual defendants named herein may not be accurate.

CLASS ACTION

18. Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated, pursuant to Rule 23 (a) and (b) of the Federal Rules of Civil Procedure.

19. The class which the plaintiffs seek to represent is composed of all merit system employees listed in the official agency and departmental lay-off plans with an effective date extending from January 1, 1980 to the present, and is so numerous that joinder of all members is impractical.

20. There are questions of law and fact which are common to the class and affect the rights of all members of the class. These common questions of law and fact predominate any questions affecting only individual members of the class. A common relief is sought for the members of the class.

21. The claims and defenses of the representative plaintiffs are typical of the claims or defenses of the class; and the representatives of the class will fairly and adequately protect the interests of the other members of the class.

22. The defendants have acted or refused to act on grounds generally applicable to the class; and the prosecution of separate actions by the individual members of the class would create a risk of varying or inconsistent adjudications with respect to individual members of the class or would as a practical matter be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede the ability of other members of the class to protect their interests.

23. Under the aforesaid circumstances the common interests of the class are such that any interest of the individual members of the class is completely outweighed by the desirability of concentrating the controversy in a single forum, and a class action is superior to any other available method for the fair and efficient adjudication of this controversy.

First Cause of Action

24. From January 1980 to the present, Defendants have formulated and implemented plans to lay-off state merit (status) employees, including plaintiffs. Such employees' seniority, service records, performance appraisals, conduct and qualifications were not considered in the formulation and implementation of the official departmental lay-off plans, as required by KRS 18.210 (14) and 101 KAR 1:120 Section 2 (2).

25. Defendants did not attempt to place employees, including plaintiffs, in other positions for which the employees were qualified, which action is required by KRS 18.210(14) and 101 KAR 1:120 Section 2 (3).

26. Defendants have laid-off merit (status) employees, including plaintiffs, while there were provisional, temporary, emergency or probationary employees serving in the same agency in the same class in the same locality retained in employment, which action is specifically prohibited by 101 KAR 1:120 Section 2 (2).

Second Cause of Action

27. Vacancies in the Defendants' agencies were filled from a competitive register before all career employees, including plaintiffs, on the reemployment register for that class were given full consideration for reemployment, as required by KRS 18.217 (3).



Third Cause of Action

28. A cause of action under 42 USC Section 1983 provides redress for deprivation of civil rights under color of state law. KRS 18.210 through KRS 18.360 provide the rules for state employment and establish for state employees, including plaintiffs, tenure and a specific entitlement to employment sufficient to constitute a property right protected by the Fourteenth Amendment. Board of Regents vs. Roth, 408 US 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Defendants deprived Plaintiffs of property interest through termination of employment without consideration of seniority, qualifications, performance appraisals, records or conduct, as required by KRS 18.210 (14), which is a violation of the due process clause, Kentucky Revised Statutes and the Kentucky Administrative Regulations.

Fourth Cause of Action

29. Defendants failed to consider Plaintiffs for reemployment before vacancies were filled from the competitive register in deprivation of plaintiffs' property interest in their jobs without due process of law in contravention of the Fourteenth Amendment.

30. Defendants terminated Plaintiffs from state employment in violation of KRS 18.210 (14), and in an arbitrary and capricious manner violative of the equal protection clause of the Fourteenth Amendment the Kentucky Revised Statutes of Kentucky and the Kentucky Administrative Regulations.

Fifth Cause of Action

31. The lay-off plans of the Defendants had a disparate impact on employees over forty years of age. For the information of the Court and the parties, charges have been filed with the United States Equal Employment Opportunity Commission arising out of the Acts complained of herein alleging that Plaintiffs have been discriminated against in employment because of age in violation of 29 USC Section 626 (c). A "right to sue" letter has not as yet been issued.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand, on their own behalf and on behalf of all those similarly situated, that this honorable Court:



1. Determine pursuant to Rule 23 of the Federal Rules of Civil Procedure that this action be maintained as a class action;

2. Issue a temporary restraining order, and preliminary and permanent injunctions restraining Defendants from laying off merit (status) employees without due consideration of seniority, service record, performance appraisal, conduct and qualifications; and/or without attempting to place said employees in other positions for which the employees are qualified.

3. Enter preliminary and final relief pursuant to Rules 54, 57, 58 and 65 of the Federal Rules of Civil Procedure declaring that the procedures followed by the Defendants in discharging merit system employees according to the official departmental and state lay-off plans is in violation of KRS 18.210 (14); KRS 18.217; 101 KAR 1:120; 42 USC Section 1983; and the Fourteenth Amendment due process and equal protection clauses;

4. Enter final judgment declaring that the procedures followed by Defendants deprive Plaintiff class members of their Constitutional rights to due process and equal protection in violation of the Fourteenth Amendment;

5. Order reinstatement of Plaintiff class members to their former positions prior to termination, demotion or transfer, or a position of like status and pay; together with any and all current and back compensation, seniority, increments and ungrades, sick leave, annual leave, compensatory leave, retirement credit and other benefits as are permitted or provided by the Kentucky Revised Statutes, Kentucky Administrative Regulations and policies of the particular departments.

6. Allow Plaintiffs their costs and expenses herein;
and

7. Allow Plaintiffs reasonable attorneys fees;

8. Any and all other relief, including compensatory damages, to which the Plaintiffs may be entitled.

9. Plaintiffs demand a trial by jury on all issues so triable;



Shelby E. Riggs
SHELBY E. RIGGS

Ann M. Peel
ANN M. PEEL

Glen H. Howell
GLEN H. HOWELL

James M. Huffines, Sr.
JAMES M. HUFFINES, SR.

Paul Cowlin
PAUL COWLIN

W. Kenneth Keown
W. KENNETH KEOWN

Phyllis J. Eggen
PHYLLIS J. EGGEN

Irene Hoskins
IRENE HOSKINS

Lore Smith
LORE SMITH

Harriet Jane Jagers
HARRIET JANE JAGGERS

Carl Havens
CARL HAVENS

Charles E. Davis
CHARLES E. DAVIS

Robert M. Damm
ROBERT M. DAMM

Robert L. Poore
ROBERT L. POORE

Elph Murphy
ELPH MURPHY

Paul E. Ball
PAUL E. BALL

Edward S. Spear
EDWARD S. SPEAR

Thomas L. Jashen
THOMAS L. JASHEN

Ruth B. Mayeux
RUTH B. MAYEUX

James M. Fuller, Jr.
JAMES M. FULLER, JR.

Billy F. Furnish
BILLY F. FURNISH

Namorie J. Falsen
NAMORIE J. FALSON

Doris S. Pearman
DORIS S. PEARMAN

Sarah S. Ramonds
SARAH S. RAMONDS

Jack G. Greene
JACK G. GREENE

Marvin Cole
MARVIN COLE

Rita M. McMahon
RITA M. MCMAHON

MARTHA E. BROWN

William C. Carver, Jr.
WILLIAM C. CARVER, JR.

Jack D. Walker
JACK D. WALKER

Patricia Terry
PATRICIA TERRY

James C. Brown
JAMES C. BROWN

Albert F. Sperath
ALBERT F. SPERATH

Larry V. Shoemaker
LARRY V. SHOEMAKER

Davis L. Jackson, Sr.
DAVIS L. JACKSON, SR.

Earl B. Howard
EARL B. HOWARD

Gary W. Goldridge
GARY W. GOLDRIDGE

Lloyd M. Ryles
LLOYD M. RYLES

Catherine A. Hayden
CATHERINE A. HAYDEN

John J. Thomas
JOHN J. THOMAS

Mary H. Peter
MARY H. PETER

G. L. Jackson
G. L. JACKSON

PLAINTIFFS

Subscribed, sworn to and acknowledged before me by the
Plaintiffs herein, this 25th day of August, 1981.

My commission expires: March 7, 1982.

Reuben M. Biley
NOTARY PUBLIC
KENTUCKY, STATE AT LARGE